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THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

BY ASHER C. HINDS

Clerk at the Speaker's Table

It is not surprising that the procedure of the American house of representatives should be subject to frequent outbreaks of criticism. The house is the organ which voices the immediate wishes of eighty millions of very active people, who are not the least of humanity in their desire to have what they want. As they usually do not agree as to what they want, and as what they shall have must be determined by a majority of their representatives, there must necessarily be from time to time large minorities of dissatisfied persons. Some of these will, according to the laws of human nature, complain of the processes by which the representatives have attained the result. Just at present we are witnessing an active recurrence of this criticism, accompanied by some interesting prescriptions for alleged troubles. Whether or not the troubles exist and the nature of the proposed remedies are important subjects for examination.

At the outset it is necessary to inquire as to the exact relations of the house of representatives to our form of government. This will sweep away some of the plausible but very superficial theories of those who conceive it a disadvantage that our speakership should differ from the speakership of the house of commons, and who seem to think that our house might easily be directed in its procedure by the president's cabinet, as the house of commons is directed by the mininstry of the crown. We are told with great jauntiness that in the early years of the republic the speaker of the house was simply a presiding officer like the speaker of the house of commons, and not at all a political leader.

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What reasons support this theory? When the Constitution was framed the members of the convention spent very little time over the house of representatives. The reason of this is that the house was an existing political institution, each colony having had under its own peculiar name a house of representatives for many years. There was no debate whatever over the clause of the Constitution which provides that the house shall choose its speaker and other officers. There was a very good reason for this. That clause was taken from the State constitutions adopted in 1776 when the colonies threw off the sovereignty of England, and was an accepted doctrine of liberty, as opposed to the prerogative of the royal governors who had sometimes disallowed speakers chosen by colonial assemblies.

The Constitution, therefore, did not create the speaker, but adopted an existing officer; and a careful examination of the proceedings of the convention in relation to this fact, makes it plain that the speaker they adopted was the speaker of the colonial house of representatives, of whom they had intimate personal knowledge, rather than the speaker of the house of commons, whom they knew of in a theoretical way only.

What of those colonial speakers? Were they merely non-partisan presiding officers, or were they forceful, militant party chiefs? It might be presumptuous for one who has not studied exhaustively the colonial period to express an opinion as to all of them. But the assertion may be made confidently that many of them were militant party chiefs, personally and as speakers; and that this character of the colonial speakers was especially prominent in the ten years preceding the outbreak of the Revolution—a period of which the framers of the Constitution not only had vivid recollections, but had been a part. In 1766 James Otis, chosen speaker of the Massachusetts house, was so active a party leader on the patriotic side that the royal governor, using an authority which the Revolution afterwards abolished, disallowed his election. The royal governor of Georgia, in 1771, took the same course in regard to the election of Speaker Noble Wimberly Jones, who was not a neutral presiding officer but "a very strong Liberty Boy." And he was not an exception in Georgia, for in 1765, as Bancroft tells us, "the great majority of the representatives, at the instance of their speaker, against the will of the governor" promised their adhesion

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to a continental congress. And in 1774 in Virginia it was Peyton Randolph, the speaker of the house of burgesses, whom Bancroft calls the "organ of the people against the representative of the crown," who led the opposition to Lord Dunmore.

This, then, is the old colonial speaker, whom Washington, Franklin, Hamilton and their confrères, imported into the Constitution of 1787, the prototype of the great speakers of the national house of representatives.

Therefore the speaker as transported into the Federal Constitution was not a mere non-partisan presiding officer. Nor did he become so under the new government. Jonathan Dayton, speaker from 1795 to 1798, conducted himself so violently in partisan debate on the floor that he was called to order by the temporary occupant of the chair. Never was there a more active political leader in the speaker's chair than Henry Clay (1811, 1823) who as a regular habit participated in partisan debates in committee of the whole. It is only since the days of Carlisle and Reed that the speakers have ceased to participate in debate; and Reed, at least, and probably Carlisle also, refrained for the express reason that such participation tended to draw the office too much into partisanship. It seems presumptuous to say so, in view of the apparently learned disquisitions on the other side of this subject, but the cold fact is that the speakers of today, as far as their functions as presiding officers are concerned, are more free from partisanship than were the earlier speakers.

It is not necessary to give much space to the theory that cabinet officers of the president should sit in our house and direct business because they do so in England. In England cabinet officers are, in fact, responsible to the house of commons for their acts and their tenure. Therefore they are always politically in sympathy with the majority of the house rather than with the king, whose political acts and utterances they direct. In this country the majority of the house is frequently opposed politically to the executive. Those who favor the engrafting of the English system on our house, may see the humor of their proposition if they will try to imagine the cabinet of Andrew Johnson trying to force his policies through the republican house of the fortieth congress, against a hostile majority led by Thaddeus Stevens; or it may be easier to frame the picture in a more modern setting, and

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imagine Rutherford B. Hayes' cabinet trying a similar experiment in the democratic house of the forty-fifth congress, led by Samuel J. Randall and filled with a majority who were continually crying that Hayes was a "fraud." But, perhaps, if the house would not accommodatingly yield its politics to the president, the president, in order to have an English system imported, might subordinate his acts and utterances to a cabinet selected by the house of representatives. The alacrity with which a recent chief executive would yield to such an arrangement will readily picture itself in the minds of all political theorists.

Has not the United States gone on very well under its present Constitution and its own traditions? Are other peoples so much happier, and other governments so much more successful, that we should abandon institutions developed according to the genius of our own people, in order to copy foreign institutions?

One familiar with the procedure of the house for the last fifteen years cannot be otherwise than surprised at the confidence of the assertions that the house has ceased to be either a deliberative body or an efficient legislating body. Those who know well its practice will rather believe that no other legislature of its size, as to membership and quorum, has a system equaling it in fairness, liberality and efficiency. On the great questions of revenue and appropriations, which are the first questions among all free peoples, its system is famous for the unrivaled manner in which it concentrates searching and intelligent deliberation on every item, without discrimination between members as to party or length of service. And its more formal debates are regulated with equal liberality and fairness. The statement that no member speaks without securing prior consent of the speaker has hardly a shred of truth by which to hang. The speaker recognizes for debate, it is true, and there is no appeal from his recognition because the house cannot afford time for such a process; but the speaker recognizes, in the great majority of instances, not arbitrarily, but according to certain usages which have the force of rules. And these usages secure recognitions to those members who, by the arrangement of committees and business, are presumably best informed on the subject, for and against the pending proposition. Of course every egotist in the house may not intrude himself into the first place in every debate. A system

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that permitted this would be intolerable, although it would please the egotists and would cut off one very noisy source of criticism. But even as it is no egotist suffers from the tyranny of the modest men. The story is frequently told, and used as a conclusive argument, that Mr. Speaker Reed thanked God that the house was not a deliberative body. It was true that he did once give utterance to such an expression, but it was when someone told him of a senator who had spoken four or five hours to the empty seats of his disgusted colleagues, and proposed to continue the performance on the next day. The speaker was thankful that the hour-rule, which, by the way, had then existed for fifty years, did not permit such a performance in the house. It was one of the great aims of Mr. Speaker Reed, as those who knew him can testify, to restore to the house that orderly, intelligent deliberation which the fathers had known, and which the violence of the filibuster had impaired. He overthrew the filibuster, and as the passions of that conflict subsided, the old deliberation gradually returned. In the last twelve years, under normal conditions, the house has been a real deliberative body. When abnormal conditions arise, as they did at the end of the first session of the sixtieth congress, the majority are obliged to declare a form of martial law in order to do the business necessary for the supply of the government. But such conditions are wholly exceptional, and have arisen only two or three times in twelve years.

The demonstration that the modern speaker is a normal, and not an abnormal, example of the speaker of the Constitution, does not, however, answer the criticism that too much power is given him by the rules. At this point it is necessary to guard against a confusion of ideas. The man whom the representatives of the people chose as their chief will ordinarily be a man of great personal influence. The election of speaker is not like a popular election, where the voters' knowledge of the candidate is derived second-hand. Most of those who elect a speaker know him personally, from intimate association and observation on the floor of the house. The politician who cultivates reputation, by judicious posing and advertising, will hardly advance far in the house, unless he be one of the rare individuals of his kind who have the actual character to go with the reputation. On the toher hand, the blunt, honest man, who values the truth above the

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praise of men, and is willing to risk popularity in doing his duty, always commends himself strongly as his fellows come to know him in the struggles and contentions of the great hall. The influence of character is one of the greatest powers in politics. Hence, the one who is chosen speaker will always be powerful in his own right, so long as the speaker is chosen after the manner of our American fathers, as a leader of the house. If leadership is to be placed elsewhere in the body, the strong man or men of the house will gravitate to the new depository, and the speaker, having become a mere presiding officer, will undoubtedly degenerate in character and influence.

The great source of the speaker's power is the function of appointing the committees, which he has exercised for more than a hundred years. All propositions are referred to the committees for consideration and report. Members may refer bills to committees with great freedom, but if a committee fails or declines to report, the member may not move to discharge the committee for the reason that the regular order of business includes no place for such a motion, and a demand for the "regular order" shuts it out. It is probably necessary that this be so, for if the member might move to discharge a committee, the house would be confronted with a possibility of more than twenty thousand of such motions, since a vast number of bills are referred to committees. The house is not powerless, however, against an obstinate or neglectful committee, as the motion to discharge a committee may be adopted by majority vote on being reported by the committee on rules, which is composed of the speaker and four other members.

This grasp of the committees on the business of the house is the main citadel of the speaker's power so far as it is dependent on the rules. The main element of it is the appointing power, since the discharging power is lodged in a committee, wherein his authority is necessarily considerably modified.

But the appointing power is far from absolute. In a new congress there will not ordinarily be vacancies in more than a third of the places on any committee, and on the important committees, where the strongest men are gathered, the proportion is usually less. It is a usage not often disregarded that a man once appointed to a committee remains there until promoted to a more desirable post. Mr. Sereno E. Payne has served on ways and means, which is the greatest committee of the

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house, for twenty years, and Mr. John Dalzell has been on the same committee for eighteen years. This illustrates the permanency of tenure, which does not change with changes of party control in the house. It is manifest that, with these conditions existing, it is very difficult for a speaker to make up a committee according to personal whim, or "pack" it, as the phrase goes. He can and always does aim to add to each committee new men who will continue the committee in certain general policies favored by his party. In other words, he acts as the responsible agent of party government. During the last six years, Mr. Speaker Cannon has permitted the minority leader to name the minority members of the committees, thus restricting still further his own opportunities for moulding the sentiment of the committees.

A great political philosopher, Edmund Burke, has given a description of party government worth recalling in this connection:

"Party is a body of men united for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed. For my part, I find it impossible to conceive that any one believes in his own politics, or thinks them of any weight, who refuses to adopt the means of having them reduced into practice. It is the business of the speculative philosopher to mark the proper ends of government. It is the business of the politician, who is the philosopher in action, to find out proper means towards those ends, and to employ them with effect."

It is not conceivable that the house of representatives will ever permit the efficiency of party control and party responsibility to be impaired by any irresponsible method of selecting its committees. Is there any better method than by placing the duty on a speaker, who must perform it in full view of the house and the nation, with no possibility of evading the responsibility? The only other alternative would be to have the appointments made by a committee, which would necessarily operate in practical secrecy, and wherein each member might, when challenged, shift responsibility to his fellows, so that the house and the nation could never locate it definitely, except after laborious inquiry.

The power of the speaker, as it is related to the committee on rules, is much overestimated. When a committee has once reported a bill,

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that bill is in the hands of the house. The speaker and the committee on rules are alike powerless to prevent its consideration and passage. They may accelerate its progress by reporting a special order, and they do this for a few bills, perhaps a dozen out of a thousand or more at a session of congress. The committee on rules exercise the function as responsible party agents; and in modern practice the special order has, in fact, taken the place of the party caucus. There was once a great outcry against "King Caucus." That is heard no more, and in place of it we hear only denunciations of the committee on rules. The majority members of that committee inform themselves thoroughly of the sentiment of the responsible party in the house. If members of the responsible party feel that the committee on rules is not acting in conformity with the party sentiment, a caucus may be called on the demand of fifty members; and the committee would not think of disregarding the pronounced wish of that caucus. And at the recent organization of the house, the republican caucus specified the members who should be appointed to represent the party on the committee. This makes the committee on rules in theory what it has long been in practice.

For the purpose of a large house of representatives and a populous nation, could there be a better system? The responsibility for the organized efficiency of the controlling party in the house is placed on the speaker, a conspicuous officer of high character. If he betrays or mal-administers the trust confided in him and does not proceed according to the main lines of his party's policies, his party associates may replace him in the next congress. Indeed, it is possible at any time for a majority of the house to remove its speaker. It has several times removed its clerk or doorkeeper, who, like the speaker, are officers of the house under the constitution.

If the speaker is sustained by his party in the house in his organization of the committees, but that organization does not subserve the public will, then the people know at once where to put the responsibility, namely, on the responsible majority party.

It is of prime importance that a self-governing people should know readily and definitely where to place responsibility, and the present rules of the house further this purpose admirably as to the great questions at issue. As to the minor questions, it is not so easy to fix respon-

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sibility, because the speaker, in framing the committees, usually fills only the vacancies in each new congress, and reaches the extent of his opportunities when he has provided for the main lines of party policy. All other systems of arranging committees must necessarily have the same limitations as to minor questions.

To a thoughtful man the query naturally arises: "If the present system is so excellent, why are the speaker and the rules criticised so constantly?"

The answer is simple. Having a considerable degree of power as to directing the house in the main lines of his party's policy, the country and many members of the house assume that he may be equally potent as to every minor and local question. Possibly he might for a short time and for a limited number of questions. But as he is the leader of his party in the house, his every act commits or compromises that party. Hence it is wiser to leave the minor and local questions to be passed on, first by the committees to which they are referred under the rules and then, if the committees endorse them, by the house itself. The house may pass any bill which a committee has reported; and the rules give the speaker no power to prevent.

But the minor and the local matters are usually of great importance to the political prospects of a few members, and of so little interest to the whole house that it is often beyond the power of their friends to muster the votes to get action on them. Hence the speaker is importuned constantly to assist the member to get unanimous consent to set the rules aside and force consideration by a short cut. The speaker, being responsible for the great lines of policy, especially for the sum-total of expenditures, must be very cautious about entering into these arrangements. And when he refuses, the member, if he be human, makes haste to write his constituents that he could pass the bill if the speaker would give the opportunity. The bill usually involves the expenditure of national money in a way very desirable to the member's constituents; and they unite with him in denouncing the speaker and the rules. Sometimes the work affects several districts, or even several States, thus giving greater body and momentum to the criticism.

At the first of the present session certain changes were made in the rules, one of which permits bills to be placed on a calendar for unan-

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imous consent. This calendar is to be called twice a month and will enable members to get their bills before the house without supervision of the speaker. The effect of the arrangement will be to relieve the speaker of an irksome and dangerous responsibility and distribute it among the members. It may diminish the speaker's power in the house somewhat; and it will certainly relieve him of a source of unpopularity in the country.

Several other changes were made at the same time, including the establishment of a Calendar Wednesday, when the house will be forced to consider certain business which it has hitherto been neglectful of, preferring to go on with the great, essential bills and then adjourn. Some of the new business will consist of general and public measures which have perhaps been unduly neglected; but much of it will be of local and personal concern, bringing charges on the treasury for advantage of localities. Another charge makes it easier for the minority party in the house to obtain record votes on propositions of legislation which it may desire to put forward.

The effect of the recent changes as a whole is to take away from the speaker certain functions and vest them in the members, and to restrict somewhat the house's power to go at any time to any matter of business on its calendars. Members who desire to get action on bills of interest to their constituents rather than of general interest will be relieved. The house will also be forced to act on some bills of national interest which it would prefer to let go to a more convenient season.

One great fact should never be forgotten in this connection: The house of representatives is the one great organ of the government which must stand at the door of the people's treasury and pronounce the "superb *No.*" It is also the body on which rests, primarily, the power of taxation. All free peoples have found by sad experience that they may not trust their executives with the power of taxation or with access to their treasuries, and the fates of Charles I and Louis XVI have taught executives that this power is not to be desired. It is a power which brings unpopularity if exercised conscientiously, and if exercised recklessly and lavishly, tends to oppression and revolution.

Those who think references to Charles I and Louis XVI far fetched, when used in this age as illustrations of the political perils attending

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the raising and appropriating public moneys, may review with interest the revolutions attendant on the exercise of these powers, even by the American people themselves through their representatives. In 1890 the republican majority in the house of representatives went to the political scaffold, because the people were dissatisfied with the McKinley tariff bill, then only a few weeks in operation, and in 1894 the democratic majority went to the same fate because of the Wilson bill. In each of these uprisings scores of congressmen were sacrificed to popular disapproval. There was no violence, for our fathers provided a wise method of frequent appeals to the people. The people themselves must exercise the taxing and appropriating power because they alone are interested, and they must necessarily exercise it through their representatives who are elected for short terms, and who must account frequently to those who trust them. A portion of these representatives may be led by local desires or sentiment to favor certain outlays; but the majority must consider the matter in its relation to other outlays, in its bearings on the whole people and the state of the treasury, and must not be swerved by the clamors of those who do not see beyond their own horizons.

Demosthenes in his time declared that abuses of government were usually discovered by impulses of private enmity, and John Quincy Adams at the end of a long political career said that this was as true in the United States as in ancient Athens. Criticism of the house of representatives by those who do not get from it the legislation they may desire, is perfectly legitimate and may be very useful. It undoubtedly helped to bring about the reforms of 1890 in the rules of the house, whereby the public business was rescued from the grip of a factious minority. But usually such criticism is not, from the very nature of the case, well founded; and should be received with great circumspection by the press and the public.

There is one thing that brings results always in the house of representatives, and that is a majority of votes. And by "a majority of votes" is not meant a majority of gentlemen who—from the long habit of politics listen sympathetically or even approvingly to the unfolding of the great project by the enthusiastic promoter; but a majority who, after thoughtful examination, are willing to stand by and give their votes through several roll calls, and even after the clock over the

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great doorway of the house has told off the dinner hour. Before a majority like that, all the powers which the rules give to the speaker and the committee on rules, are like dust before the wind.

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DEFECTIVE METHODS OF LEGISLATION

ERNEST BRUNCKEN

Frequent, emphatic, and apparently unanimous for many years, have been the complaints that there is too great an output of statutory law by the fifty-odd legislative bodies within the sovereignty of the United States. No less widespread are the charges that the majority of these statutes are unwise, ill-digested and badly drawn. Rarely, however, does one hear a remedy suggested, nor are the causes of these evils often subjected to analysis. The newspapers, to be sure, with their admirable capacity for passing judgment on all things at a moment's notice, without need of the slow process by which other people must arrive at conclusions, have long ago found both the cause and the cure. It would seem, according to most of them, that the cause is found in the preternatural wickedness and incapacity of the men elected to legislatures; while the remedy appears to lie in having just as few sessions as possible, and having the members hurry through their task with the greatest speed that is physically attainable. The public, having no other means of information, reflect the reportorial wisdom.

This paper proposes to show that the true cause of the evil is found in the constitution and methods of our legislative bodies, by which a thorough discussion of proposed legislation, and a proper sifting of worthy bills out of the chaff, are made exceedingly difficult. If the cause is clearly understood, a point of vantage will have been gained from which reforms can be undertaken with reasonable hope of success.

To begin with, it will be well to take a look at the precise nature of the evil. We must eliminate from consideration all complaints directed against legislation springing from the modern tendency to submit to governmental regulation many matters which an earlier generation left entirely to private management. Such legislation is of considerable bulk not in this country only but in most other countries. It is the outcome not of faulty methods but a change of fundamental conceptions regarding the nature of the state.

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Again, we must not forget that much of what we put into statutes is in other countries put into executive regulations of various sort. Thus it is misleading to compare the modest volume containing the product of a single year of the British parliament with the ponderous tomes issued every two years as the session laws of almost every American state, unless we first add the greater part of the very much larger volume known as *Statutory Rules and Orders*. When we compare our legislation with that of continental countries, the unfairness of disregarding executive ordinances would be even greater.

Finally, the constitutions of most States require each act passed by the legislature to deal with a single subject. This must of itself make the apparent amount of new legislation much greater than it would seem if many different, though allied, matters could be disposed of in a single act. Especially is this true where the courts construe the constitutional provision in such a way as is done, for instance, in Lewis v. Dunn, 132 Cal. 291.[1]

But after making allowances for all these circumstances, it is still undeniable that we suffer from a multiplicity of statutes. The evils growing out of our excessive legislative activity are manifold: First of all, the law becomes uncertain. Especially those parts which have been codified suffer from constant amendment. A series of legal propositions, neatly paragraphed and numbered, seems to present to the average legislator a temptation to tinker with them, from which the more formless mass of the common law fortunately escapes. Naturally, a few States like California, which have attempted to codify the whole law, are the greatest sufferers from the amending mania. As a result, neither lawyer nor layman can say with certainty what the law is on any given subject, unless he has a phenomenal memory. Each new amendment is likely to be the source of expensive and vexatious litigation involving its construction or validity. How great a burden this imposes upon the community, may be learned from this illustration: Volume 90 of the *Pacific Reporter*, containing the opinions of supreme and appellate courts in thirteen western States and territories, none of them very populous, contains 416 cases in which the construction of statutes or constitutions was involved. All the cases reported in this

[1] See on this subject: Bruncken, The Multiplicity of Statutes, 18 *Green Bag*, 516

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volume, about 1000 in number, were decided within the two months from June 10 to August 12, 1907. Other volumes of the *Reporter* system will show about a similar proportion of statutory cases. In other words, nearly one half of the litigation of the country, going beyond the nisi prius courts, involves the construction of statutes.

The greater the number of statutes passed, the greater, of course, is the probability that the question of construction will arise, requiring adjudication by the courts. Yet the greater part of such litigation would be avoided if so many American statutes were not unskillfully drawn. The legislatures almost invariably count among their members numerous lawyers, often men of high ability. Yet many of the acts passed by them fly into the face of the most elementary rules of construction, not to speak of the numerous cases where draftsmen are apparently unable to express their thoughts in comprehensible English. An illustration of the former is found in the California case of Ex parte Williams, 87 *Pacific Rep.* 565. There it was intended by the legislature (or at least, the newspapers of the State so assumed) to prohibit all gambling by means of slot machines. Williams was convicted of running a machine playing for cigars. He was released on habeas corpus on the ground that the complaint, which charged that the gambling was for cigars, stated no offense. The statute prohibited gambling "for money, checks, credit or other representatives of value," and did not include cigars. It is hard to see how the court could construe otherwise (according to the familiar principle of "noscitur a sociis"). The lawyers in the legislature which passed the statute knew of course that "representatives of value" in this connection meant things like poker chips and the like; but they allowed the faulty wording to pass.

Another common defect of American statute-making is the incidental effect upon other and apparently unrelated statutes which many new statutes are found to have when it is attempted to administer them, but which are never suspected during the process of enactment. It is not necessary to enumerate and illustrate in detail the many other faults of American statute law. Its generally poor quality is universally admitted.

Coming now to consider the working methods of our legislatures and comparing them with those of other parliamentary assemblies, we are struck by two peculiarities. In the first place, with us practically all

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legislation is set in motion by some individual member, who introduces a bill fully drawn and ready for acceptance. Of course it often happens that the bill is really the product of the executive branch, or again that the member introducing it is merely the agent of others, within or without the law-making body. But in all cases the individual member makes himself responsible for the introduction, is expected to guide the measure through its various parliamentary stages, and receives personally whatever credit may attach to its final passage. In most, if not all, parliamentary bodies outside the United States, it is the exception for a measure to be thus fathered by an individual member. Ordinarily, bills are introduced by the executive, whether that branch of government be essentially a committee of parliament, as in Great Britain; or standing independent from the legislature, as in Germany.

The second important difference between American and foreign parliamentary bodies consists in this, that only America makes statute-making the principal work of the legislatures. The corresponding bodies of foreign countries devote the greater part of their energies, not to the details of legislating, but to determining the policies of the government. This is true to the fullest extent of the British parliament, which is first of all a governing, and secondly a law-making body. Hardly less true is it of the self-governing colonies, and other countries with parliamentary government. But in Germany or Austria, where the executive is not responsible to parliament, it is no less correct to say that legislation proper is but the lesser part of parliamentary labors, while by debates, interpellations and other means it is constantly sought to influence the policy of the executive. Legislation itself is frequently used merely as a means towards the more important end of overturning an administration. It would not be correct to say that work of this sort is entirely unknown in our legislatures, and still less in congress. But most of the discussions on policies of the State are, with us, carried on in the press and on the stump, not within parliamentary walls.

From these two fundamental distinctions: the responsibility of the executive for most of the bills introduced, and the preoccupation of parliamentary bodies with questions of policy instead of legislative detail, foreign countries derive the advantage of ample leisure in the preparation of proposed legislation. When a government bill appears

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before parliament, the chambre des députés, or the reichstag, it has behind it a long history of careful discussion by experts on the subject with which it deals, and by representatives of the various interests affected. It has been drawn by men specially trained for this business, who have taken care to express it so clearly that all chance for disputing the meaning is as far as possible avoided, and who have also considered the effect it may have on other parts of the statute book. Perhaps a preliminary draft has been given to the public for discussion, and suggestions thus brought out have been heeded. In many cases it is accompanied by a more or less elaborate document setting forth the reasons for introducing the bill and furnishing the data necessary for understanding it, while invariably a parliamentary representative of the government stands ready to explain its provisions in detail on the floor of the house.

Very different is the character of a bill before an American legislature. Sometimes, to be sure, it has also been drawn carefully, discussed by competent men in all its bearings, and has the same degree of technical perfection expected of a British government bill. But unfortunately that is the exception. Far oftener it is hastily drawn, by someone who does not make a business of drafting laws, at the suggestion of somebody who has a more or less definite notion of what he desires to accomplish by his bill, but is very hazy indeed with regard to the proper means towards that end. Very often the members draw their own bills, although many of them are not lawyers and have not even an elementary knowledge of legal requirements. The result is wonderful. In the California State library the bills introduced during a long series of sessions have been carefully preserved. The variety of absurd blunders in them is truly astonishing. For instance, it is quite common to find a bill without an enacting clause. Sometimes there is not even a title. Such trifles as section numbers are very commonly omitted, sometimes in bills drawn by members of the bar. The mass of crudities so introduced is referred to committees, which are expected to sift the grain from the chaff, and to fashion into presentable shape the bills to be recommended for passage. The most important part of the American legislative process is the consideration in committee. Here is supposed to be done all the work done elsewhere in executive departments before the introduction of a government bill. Here also is supposed to be an

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opportunity for discussion by the public. Here the general policy of the bill as well as the technical detail must be given thorough consideration, if it is to receive such at all. For it is well known that not one bill out of a score is made the subject of even cursory debate on the floor of the house, not to speak of such thorough discussion as a British government bill receives at each stage of its progress. The committee of the whole house has also fallen into desuetude in most State legislatures, so that there is no time left for discussion, except before and by the committee.

This being so, one would think that the utmost pains had been taken, both by law and custom, to insure the amplest facilities for debate while a bill is before the committee. But the reverse is true. While most committees will not refuse to give persons interested a hearing, no legal right to be heard exists. In a few legislatures it is the practice of the more important committees to make and publish a calendar for the public consideration of bills; but even this is an exception. In most cases, no outsider can tell when a bill may be disposed of by a committee. Thus everything depends upon the favor of the members, or most often of the chairman. If a hearing is accorded, there is rarely a chance for thorough argument. "Be brief," is the most urgent injunction given, although the subject may be one that could not be exhausted in many hours. But even this limited form of discussion is given to very few bills. In the majority of the measures nobody has an interest sufficiently strong to induce him to make a vexatious and expensive trip to the state capitol. Consequently, all the discussion the ordinary bill gets even in the committee is the brief explanation made by the member introducing it. There usually being nobody present to oppose, the committee decide for or against a favorable report upon first impression. A committee report, however, is final as to the fate of almost all bills. An honest decision upon first impression is even to be preferred to the all too common practice of influencing members privately. But I desire not to enter, at this time, upon the sinister subject of lobbying. Even without taking that into consideration, it is apparent that much of the fate of a bill depends upon the personal influence of the member who introduces it or otherwise interests himself in its behalf. In one of the State legislatures I know of, it has actually come to this that by a tacit understanding each member has the privilege of having a certain

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number of his bills passed without too curious scrutiny of their contents. No wonder that much work of each session consists of undoing the work of the previous one.

Members of the legislative committees are not to be blamed for not allowing more time to the consideration of the bills. The number of the measures before them prevents them from giving much time to any but a few selected ones, usually those having attracted more than ordinary public attention. Contrary to the impression created by much unintelligent newspaper reporting, many members of committees work exceedingly hard. But the task before them is appalling. The whole system of State legislation would long ago have broken down, were it not that a tremendous amount of thought and skill has been bestowed upon some bills, before their introduction, by unappreciated and unknown volunteers. Here, as so often in American public life, inefficient and puerile methods are prevented from working utter ruin by the tremendous fund of self-sacrificing public spirit concealed among the people. But the fact that some measures are thoroughly put into shape by voluntary efforts offers no remedy against the crudity of the rest.

This almost entire absence of machinery to promote discussion and detailed consideration of bills is, in my opinion, the principal cause of the poor quality, as well as the excessive number of American statutes. The wonder is, not that the result of these methods is so bad, but that it is not worse. Again, the remarkable amount of common sense and practical skill found among the American people and reflected in the membership of the legislature is the saving factor. The ordinary legislator seems to feel vaguely that he is doing a meritorious act when he prevents a bill from becoming a law, and so it has become proverbially easier to "kill" than to pass a measure. Unfortunately, this attitude is rarely discriminative, so that among the slaughtered bills one is just as likely to find wise as unwise, well-considered as hastily-drawn propositions. Another tendency that checks some bad legislation is the well-known conservatism of American lawyers. These hold influential positions in most legislatures, and almost always frown upon changes in the law, especially in those States which have resisted the code-making temptation. So far as bills attempt merely a change in detail, this attitude is an unadulterated blessing. But when it prevents really

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well-thought-out and comprehensive reforms, which many branches of the law, like the law of negligence, sorely require, then it becomes another obstacle in the way of efficient legislation. However, comprehensive and systematic legislation is not favored in any way by our methods. Almost all new statutes embody nothing but petty changes and comparatively unimportant devices. Where comprehensive legislation is, in rare instances, attained, it is usually the result of long agitation among the people, which the legislature is compelled reluctantly to obey.

The lack of thorough discussion, which characterizes the drafting of bills and their committee stage, also follows them on the floor of the house. A vast majority are not the subject of debate at all; not a few, however, are amended, and rarely are these amendments given any intelligent consideration by any member except the one proposing it. Thus it happens but too often that the purpose of the act is defeated by injudicious amendment on the floor, or that it becomes vague, uncertain, if not quite meaningless through amendments necessitating verbal adjustments that are neglected. To be sure, this evil is not peculiar to American legislatures. Sir Courtenay Ilbert, the celebrated British parliamentary draftsman, becomes positively pathetic in his complaints on the amendment nuisance (*Legislative Methods and Forms*, page 230, and elsewhere). But it is beyond a doubt that the evil is much greater in America than elsewhere, principally on account of the lack of opportunity for discussion.

Sight should not be lost of the fact that in the American States legislation is more difficult, from the standpoint of technical form, than anywhere else in the world. In other jurisdictions, flaws in the wording or in adaptation to other statutes may indeed cause work for the courts; but some time the task of construing and interpreting will be finished, and then everybody will be able to know what the statute means. With us, we have exactly the same trouble, but in addition, we have the far greater task of fitting our statute into our constitution. Nor does this mean merely the application of a few great principles regarding the powers of the legislatures and of the States. In nearly all the States the constitutions now contain a multitude of technical restrictions, some relating to the substance, some to the form of statutes, a thorough knowledge of which is possible only to lawyers, and by no means pos-

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sessed by all lawyers. Some of these constitutional provisions have introduced undreamed-of and formidable obstacles to legislation. Thus the apparently simple provision, now very commonly in force, that "each bill shall deal with one subject only, which shall be expressed in the title," has become a veritable bugbear. In their anxiety to comply with the first part, legislators split their measures up into numerous bills, at the risk of having some pass and others fail, so that perhaps only the *disjecta membra* of a well conceived scheme become law. In order to be within the second part of the provision, many believe that they must enumerate all the details of the bill, thus making titles absurdly cumbersome, and themselves suggesting that the act is multifarious. It is true that no lawyer, having before him the decisions in his own and other States, need commit either of these faults. For the precise meaning of the provision has been very clearly expounded in numerous cases. But many bills never pass under the scrutiny of a careful lawyer, and again the lack of discussion stands in the way of perfection. For in the progress of the bill, somebody is almost sure to say: "Your title does not express the subject," or "Your bill has more than one subject," and for fear of not being given time to disprove the charge in committee or on the floor, one is tempted to commit the faults mentioned against better knowledge.

Closely connected with our system of entrusting the drafting, introduction and management of bills to individual members is the curious lack of unity in the output of a legislative session. Bills embodying the most varied lines of policy on the same subject matter are passed by the same body, and it happens not infrequently that two bills passed on the same day flatly contradict each other. Were it not for the veto power of the governor, these instances would be much more frequent. In truth, an American State legislature has no policy, except in the comparatively rare cases where some State question has been a distinct issue in the preceding election campaign. Membership in a political party is, as everybody knows, ordinarily no test whatever of a legislator's sentiments on State matters, because party relation is determined by national issues, if not by reasons quite disconnected from opinions on policies.

Turning now to the possible remedies for these evils, I would suggest three feasible reforms, which I believe would go far towards improve-

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ment. The first is to give very much greater facilities for thorough discussion of all measures coming before the legislature. The next is some device for the establishment of legitimate leadership within the legislature itself; and the third is provision for expert workmanship in the preparation of bills.

Although I am firmly convinced that the lack of discussion is more pernicious than any of the other evils, and although the evidence therefore seems sufficiently on the surface, I am well aware that public opinion fails to recognize this fact. The newspapers seem to consider lightning speed the one virtue to be demanded of a legislature. If it does not begin putting bills on their final passage on the third day after its convening, the members are sure to be charged with idling. Detailed calculations of the cost of each day's session begin to appear early. No wonder that the general public, without information except through the papers, have imbibed these notions, and as a result a majority of the States have, within the last half-century, introduced biennial sessions. What is worse, many States have practically limited the length of sessions to sixty or even forty days by cutting off the members' pay after that limit. No candid observer will deny that it is physically impossible for a legislature to properly attend to its business within that time. Whatever one may think of biennial sessions, the first step must be to abolish the time limit. The only reason ever advanced for the latter is economy. This could be safeguarded by paying members a lump salary instead of per diem fees, limiting the number and pay of legislative employees, and appointing these under some form of merit system, so as to cut off the pressure of political hangers-on.[2]

When we have got rid of the time limit, committees should be given the means of doing their work more thoroughly. The public should have a legal right to be heard. To this end, each committee should be obliged to make up definite calendars for the consideration of all bills before it. The time and place of the hearings should be published a reasonable time in advance. Of course there must be a reasonable limit on the possible talkativeness of advocates or opponents of measures, but if the principle is recognized that a citizen's right to appear

[2] A constitutional amendment abolishing the time limit was adopted by the electors of California in 1908.

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before a committee is a legal one and not merely depending on favor, there will be no difficulty on that score. At all events, it is essential to give opportunity for real discussion. In order to do this, it may be well for some legislatures to thoroughly revise their lists of committees. For in many cases some committees, and consequently some members, have hardly any work to do, while others are absurdly overburdened. Perhaps it would also be well to increase the number of members considerably, so as to have more men available for committees.

While all these measures would tend to make discussion more effective, none would be so far-reaching as a suggestion which has been made repeatedly but never put into force. It is that of dividing the legislative session into two parts. In the first, the only business in order, after organization, should be the introduction of bills and their reference to committees. The legislature should thereupon adjourn for a substantial period, say three months. In the interval, all bills could be printed and published. There would thus be ample time for public discussion of each measure, and there is no reason why committees should not meet during this time. When the legislature meets again, no new bills may be introduced, except in emergencies and by unanimous or nearly unanimous consent. It is evident that this plan would give opportunities for discussion and publicity such as are now entirely out of the question.

The next remedial measure proposed is some device to obtain a workable system of leadership. This is almost as necessary for satisfactory legislation as facilities for discussion, for by this alone the various committees can be prevented from working at cross-purposes. Of course we all understand that in nearly all States for a long time there has been a sort of leadership at work, a leadership of sinister, semi-secret character, working for the benefit of special interests instead of the State. It is to counteract the influence of the corporation-serving bosses that open and official leadership is required. In every legislature there are a number of men whom everybody recognizes as more efficient and influential than the rest. Why should not these be gathered into a committee to which every bill must be submitted before it is put on final passage? In this way they could prevent the adoption of bills conflicting in form or purpose. They could develop a real, consistent legislative policy. By officially recognizing their position the power

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of these men would be made less irresponsible, and the probability of their being dominated by secret, outside influences would be greatly diminished. Such a committee would perform many of the regulating and unifying functions of "The Government" in Great Britain, while at the same time we should avoid the drawbacks of the parliamentary system. For while we must recognize the present superiority of the British over American legislative methods, we ought not to be misled into a desire for the substitution of parliamentary government in the place of our own form. It does not require a very extensive reading of British periodicals, legal or lay, to discover the evil effects of parliamentarism on legislation, while in other European countries where it prevails, like France or Italy, parliamentary government is daily falling into greater disrepute. Its worst fault is that every legislative measure is considered first of all with regard to its serviceability for maintaining or subverting an administration. No government will introduce a measure, no matter how much the country may need it, unless it can see a political advantage in doing so; no minority will fail to attack a government bill, it matters not how wise and well-conceived, for "the opposition is there to oppose." One of the brightest features of our legislative system is that political partisanship plays a comparatively small rôle in the actual work of framing and passing ordinary bills.

The third and last of my proposed improvements is one that has come measurably near to realization in several States. With the advent of the legislative reference bureau the need of more careful draftsmanship has been recognized, and to some extent supplied. It is evident that the system is capable of considerable extension, but I shall not discuss it in detail, for that has been amply done by other and more competent hands. Only to one point I should like to call attention: The work of the bureau, both in drafting bills and the gathering and collating of information, falls in admirably with the proposition of dividing the legislative session into one for the introduction and one for the disposal of bills. For during the recess the bureau will have time to re-draft crudely drawn bills, as well as collect data for discussing them.

I have tried in this paper to present some of the most striking faults of our system of making statutes, and to propose some remedies therefor. I do not believe that after the adoption of the latter all just com-

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plaints will cease, but I do believe that their number and seriousness will be greatly diminished, and that will be a gain worth striving for. Some of the worst evils I have not even touched upon, for they present questions, not to methods and machinery, but of men and the spirit that animates them. If all the members of a legislature possessed statesmanlike capabilities, they would adopt wise laws even with present methods. Such a condition can hardly be conceived even in Utopia. But how to get even perceptibly better men into the legislatures, especially in the face of the constant drain of the ablest and most ambitious from State politics into national political life, presents problems which I have no disposition to attack.

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THE SEPARATION OF THE RACES IN PUBLIC CONVEYANCES

GILBERT THOMAS STEPHENSON

INTRODUCTION

There is perhaps no phase of the American race problem which has been discussed quite so much within the last decade as the Jim Crow laws; that is, the statutes requiring separate accommodations for white and colored passengers in public conveyances. This has been the case largely because these legislative enactments are of general concern, while the other legal distinctions have directly affected only certain classes of either race. For instance, the laws prohibiting intermarriage concern only those of marriageable age; the suffrage qualifications apply only to males of voting age: the statutes requiring separate schools immediately affect only children and youths. But the laws requiring white and colored passengers to occupy separate seats of compartments or coaches concern every man, woman, and child, who travels, the country over. They affect not only those living in the States where the laws are in force, but the entire traveling public. The white man or the colored man in Massachusetts may not care anything about the suffrage restrictions of South Carolina, but, if he travels through the South, he must experience the requirements of the Jim Crow laws.

Inasmuch, then, as these statutes are of such general concern, it is proper that the people should know where they are, what they are, and the means of their execution. It is not the purpose of this article to take sides and discuss the justice or injustice of the laws, or the partiality or the impartiality of their execution, but rather to examine the provisions of the laws, and, so far as may be, to summarize the court decisions upon the different sections of the laws.

Before the Civil War, the slaves were not citizens, and their privi-

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leges were largely determined by the will of their masters. It was not till 1865, therefore, that the use of public conveyances—railroad cars, street cars, and steamboats—was restricted.

ORIGIN OF "JIM CROW"

The phrase "Jim Crow" has become so inseparably affixed to the laws separating the races in public conveyances that one State, North Carolina, has indexed the laws under "J" in a volume of the annual statutes. The earliest public use of the phrase appears to have been in 1835, when Thomas D. Rice, the first negro minstrel, brought out in Washington a dramatic song and negro dance called Jim Crow. Joseph Jefferson, when only four years old, appeared in this dance [*Century Dictionary*, 546]. In 1841, Jim Crow was first used in Massachusetts to apply to a railroad car set apart for the use of negroes [*Ibid.*, 3233]. The phrase, then, has a somewhat more dignified origin than is ordinarily attributed to it by those who have considered it as only an opprobrious comparison of the color of the negro with that of the crow.

THE DEVELOPMENT OF LEGISLATION PRIOR TO 1875

The first Jim Crow laws are those of Florida and Mississippi in 1865 and Texas in 1866. The laws of Florida provided: "That if any negro, mulatto or other person of color shall intrude himself into . . . any railroad car or other public vehicle set apart for the exclusive accommodation of white people, he shall be deemed guilty of a misdemeanor and, upon conviction, shall be sentenced to stand in pillory for one hour, or be whipped, not exceeding thirty-nine stripes, or both, at the discretion of the jury, nor shall it be lawful for any white person to intrude himself into any railroad car or other public vehicle set apart for the exclusive accommodation of persons of color, under the same penalties" [Laws of Florida, 1865, p. 25]. The law of Mississippi was: "That it shall be unlawful for any officer, station agent, conductor, or employee on any railroad in this State, to allow any freedman, negro or mulatto, to ride in any first-class

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passenger cars, set apart, or used by, and for white persons; and any person offending against the provisions of this section, shall be deemed guilty of a misdemeanor; and on conviction thereof, before the circuit court of the county in which said offense was committed, shall be fined not less than fifty dollars, nor more than five hundred dollars; and shall be imprisoned in the county jail, until such fine, and costs of prosecution are paid: Provided, that this section, of this act, shall not apply, in the case of negroes or mulattoes, traveling with their mistresses, in the capacity of nurses" [Laws of Mississippi, 1865, pp. 231–232]. Texas simply provided that "every railroad company shall be required to attach to each passenger train run by said company one car for the special accommodation of Freedmen" [Laws of Texas, 1866, p. 97].

Perhaps other Southern States would have undertaken similar legislation, had the legislatures been left unfettered; but under the Reconstruction régime, a number of the States passed laws prohibiting discrimination against negroes in public conveyances. In 1870, the Georgia legislature enacted a statute requiring the railroads in the State to furnish equal accommodations to all, without regard to race, color or previous condition, provided the same fare was charged. [Georgia Laws, 1870, pp. 427–428. Prior to January 1, 1861, the regular fare of persons of color in this State was only one-half that of white persons.] In 1871, Texas repealed the law of 1866 [*ante*] and prohibited public carriers "from making any distinction in the carrying of passengers" on account of race, color or previous condition, making the violation of the law a misdemeanor punishable by a fine of not less than one hundred or more than five hundred dollars, or imprisonment for not less than thirty or more than ninety days, or both [Texas Laws, 1871, 2d session, p. 16]. In 1873, Louisiana prohibited common carriers from making any discrimination against any citizen of the State or of the United States on account of race, color or previous condition, and went farther to prohibit common carriers from other States in the State to make such discriminations [Acts of Louisiana, 1873, pp. 156–157]. Out of this latter provision arose the great case of Hall v. Decuir [*post*]. In 1874, Arkansas prohibited any public carrier from making any rules for the government or control

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of his business "which shall not affect all persons alike, without regard to race or color" [Code of Arkansas, 1874, sec. 764, p. 259].

In the mean time, some of the States outside of the South were taking steps to adjust the privileges of persons of color. In 1866, Massachusetts made it unlawful "to exclude persons from or restrict them in . . . any public conveyance . . . except for good cause" [Massachusetts Acts and Resolves, 1866–67, p. 242]. The following year, Pennsylvania enacted a statute prohibiting railroads from excluding persons from their cars or requiring them to ride in different parts of the cars on account of color or race, also prohibiting the conductor or other agent of the railroad from throwing the car off the track to prevent such persons from riding [Laws of Pennsylvania, 1867, pp. 38–39]. This law was passed just a few days before the famous case of West Chester and Philadelphia Railway Company versus Mills was decided [*post*].

The following joint resolution adopted by the legislature of Delaware on April 11, 1873, is interesting as showing the feeling at this time in a State outside of the South:

"That the members of this general assembly, for the people they represent, and for themselves, jointly and individually, do hereby declare uncompromising opposition to a proposed act of congress, introduced by Hon. Charles Sumner at the last session, and now on file in the senate of the United States, known as the supplemental civil rights bill, and all other measures intended or calculated to equalize or amalgamate the negro race with the white race, politically or socially, and especially do they proclaim unceasing opposition to making negroes eligible to public offices, to sit on juries, and to their admission into public schools where white children attend, to their admission on terms of equality with white people in churches, public conveyances, places of amusement, or hotels, and to any and every measure designed or having the effect to promote the equality of the negro with the white man in any of the relations of life, or which may by possibility conduce to such result.

"That our senators in congress be instructed, and our representatives requested to vote against and use all honorable means to defeat the passage by congress of the bill referred to in the foregoing resolution, known as the supplemental civil rights bill; and all other

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measures of a kindred nature, and any and every attempt to make the negro the peer of the white man" [Laws of Delaware, 1871–73, pp. 686–687].

THE FEDERAL CIVIL RIGHTS BILL OF 1875

The federal civil rights bill of 1875 was the highwater mark of legislation to protect persons of color in the enjoyment of the rights of citizenship. In 1868, the fourteenth amendment to the Federal Constitution was proclaimed to be in force, the first section of which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Presuming that such action was authorized by this first section of the fourteenth amendment, congress, on March 1, 1875, passed the civil rights bill, the interesting sections of which are:

Section 1. "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Section 2. "That any person who shall violate the foregoing section . . . shall, for every such offense, forfeit and pay the sum of $500 to the person aggrieved thereby . . . and shall also . . . be deemed guilty of a misdemeanor" [18 Stat. at Large, 335–336].

The constitutionality of this statute was not questioned until eight years after its passage. In the meantime, the States seem not to have taken much action, except that, in 1881, New York enacted a statute virtually copying the federal law [New York Laws, 1881, vol. i, p. 541].

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In 1883, there came before the supreme court of the United States five cases, all of which tested the constitutionality of the civil rights bill, and which were grouped and called the civil rights cases [109 U. S., 3]. Two of them concerned the rights of colored persons in inns and hotels; two of them their rights in theaters; and one, Robinson and wife v. Memphis and Charleston Railroad Company, regarded the rights of persons of color in public conveyances. Mr. Justice Bradley, delivering the opinion of the court, took the ground that the first and second sections [*ante*] of the civil rights bill were unconstitutional for these reasons: Firstly, they were not authorized by the thirteenth amendment, abolishing and prohibiting slavery, because the separation of the races in public places and conveyances is not a badge of servitude. He says, "It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with the other matters of intercourse or business." Secondly, they are not authorized by the fourteenth amendment because that refers to State action, while the civil rights bill refers to individuals. It is State action of a particular character that is prohibited. "Individual invasion of individual rights is not the subject matter of the amendment . . . It does not authorize congress to create a code of municipal law for the regulation of private rights; but to provide methods of redress against the operation of State laws . . . until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the fourteenth amendment, no legislation of the United States under said amendment nor any proceeding under such legislation can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority." Thus, the power of congress to interfere with individuals in this matter was denied, and they were left free to make such regulations for the transportation of passengers as they saw fit, so long as they did not violate the State laws and so long as the State laws did not violate the federal laws.

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STATE LEGISLATION GROWING OUT OF THE CIVIL RIGHTS CASES

The impotence of the federal government under the decisions in the civil rights cases encouraged the States to take the matter into their own hands. Those States which opposed all racial distinctions virtually copied the civil rights bill. Those which believed that the races should be separated in public places and conveyances proceeded to pass laws to that effect, always taking care to keep within the pale of the Federal Constitution (especially the fourteenth amendment) by providing that the accommodations for both races be equal.

On February 7, 1884, Ohio enacted a statute copying the civil rights bill, except that the fine was reduced from $500 to $100 [Laws of Ohio, 1884, pp. 15–16]. On March 4, 1885, Nebraska enacted a civil rights bill, but it did not contain the words "race" or "color" [Laws of Nebraska, 1885, p. 393]. Indiana enacted a similar law on March 9, 1885, specifying restaurants, eating-houses, and barber-shops in addition to those mentioned in the federal statute [Acts of Indiana, 1885, p. 76]. Rhode Island adopted the essential provisions on April 24 of that year [Rhode Island Acts and Resolves, 1884–5, p. 171]. Michigan followed suit on May 28 [Acts of Michigan, 1885, p. 131]. Pennsylvania enumerated restaurants, hotels, railroads, street railways, omnibus lines, theaters, concerts, halls or places of amusement [Laws of Pennsylvania, 1887, pp. 130–131]. New York, in 1893, added cemeteries as places in which there should be no racial distinctions [Laws of New York, 1893, pp. 1720–1721]. Massachusetts made the laws more stringent than those of the other States by prohibiting not only discriminations and restrictions but also distinctions in the privileges of colored passengers [Laws of Massachusetts, 1885, p. 174; 1895, p. 519]. Connecticut was the last of these States to provide against restrictions of the rights of passengers in public conveyances [Connecticut Public Acts, 1905, p. 323].

Before considering the Jim Crow laws of the Southern States, it will be interesting to look into some of the court decisions between 1865 and 1881, the latter being the date of adoption of the first Jim Crow law of the second period, to see what steps the railroad, street car, and steamboat companies had taken to separate the races, in the absence of State legislation upon the subject.

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In 1865, a colored woman ejected from a street car in Philadelphia brought action against the conductor, who pleaded that there was a rule established by the road superintendent that negroes were to be excluded from the cars. The court held that the conductor had no right to eject a passenger on account of color or race, and that a regulation of the company would not protect him from liability in damages [Derry v. Lowry, 6 Phila. Rep., 30].

Just a few days after the Pennsylvania legislature passed the act prohibiting discriminations against persons of color in public conveyances [*ante*], the supreme court of the State ruled that it was not an unreasonable regulation of the railroad company to separate the passengers so as to promote personal comfort and convenience [West Chester and Phila. Railroad Co. v. Mills, 55 Pa. State Rep., 209]. This is interesting because it is the earliest case found supporting the separation of the races in public conveyances. Since the case arose before the civil rights act of the State was adopted, it does not purport to rule upon the constitutionality of that act.

In San Francisco, in 1868, a street car conductor refused to stop for a colored woman, saying, "We don't take colored people in the cars," whereupon she brought an action and recovered $500 in damages [Pleasant v. N. B. & M. R. R. Co., 34 Calif., 586]. Here there is an implication that the railroad company had a regulation excluding persons of color from street cars.

In 1870, the Chicago and Northwestern Railway Company refused to admit a colored woman to the car set apart for ladies and gentlemen accompanying them. Whereupon she brought action and recovered $200 in damages [Chic. & N. W. Ry. Co. v. Williams, 55 Ill., 185]. It does not appear from the case that the railroad had set apart any car or part of car for the exclusive accommodation of colored persons.

A steamboat company in Iowa, in 1873, had a regulation that the colored passengers should not eat at the regular tables but at a table on the guards of the boat. The supreme court held that this rule was unreasonable and could not be enforced [Coger v. N. W. Union Packet Co., 37 Ia., 145].

The first case involving the separation of white and colored passengers on cars to reach the United States supreme court was brought

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against the Washington, Alexandria, and Georgetown Railroad Company, in 1873 [W. A. &. G. Railroad Co. v. Brown, 17 Wall., 445]. This road was chartered by congress in 1863 with the provision that "no person shall be excluded from the cars on account of color." A negro woman, with a first-class ticket, was made to ride in a separate coach precisely equal to that used by the white passengers. The court ruled that the act of 1863 meant that persons of color should travel in the same cars as white persons along with them in such cars; that the law was not satisfied by the company providing cars assigned exclusively to persons of color, though they were as good as those assigned to white passengers.

In 1873, in a charge to the grand jury in the circuit court of the western district of North Carolina, Judge Dick appears to have been the first federal judge to question the constitutionality of the federal civil rights bill, though he does not argue the point. He says, "Railroad companies may have first-class coaches for colored men, and first-class coaches for white men." [Charge to grand jury, Fed. Cases, No. 18, 258.]

In 1869, the Louisiana legislature passed a law prohibiting railroad, street car, and steamboat companies from making any discrimination on account of race or color [Acts of Louisiana, 1869, p. 37]. A test case arose upon this act in 1875, and in the often cited case of Hall v. Decuir [95 U. S., 485] the supreme court ruled that the Louisiana act was unconstitutional because it was an interference with interstate commerce. Chief Justice Waite said: "If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship." This case has stood as a warning to the Southern States that they must be careful to mention in their Jim Crow laws that they apply only to intrastate passengers. But, as will be seen later, if this case has not been actually overruled, it has certainly been avoided.

In a case arising in the district court of Texas in 1877, it was held that for a railroad employee to deny to a passenger the right to ride in the only car appropriated for the use of ladies because she was a colored woman, was a violation of the civil rights act [U. S. v. Dodge, 1 Tex. Law J., 47]. But the judge, in charging the jury, said that, if

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there were two cars equally fit and appropriate, then the white and colored passengers might be separated.

These are only a few of the many cases which arose between 1865 and 1881, involving the separation of white and colored passengers; they are cited to show that, in the absence of legislative authority, many of the public conveyance companies had regulations separating the races. In other words, the Jim Crow laws, when they came, did scarcely more than to legalize an existing and widespread custom.

As already suggested, the Jim Crow laws apply to three classes of vehicles—namely, the steamboat, the railroad car, and the street car. Those concerning steamboats will be treated first because they are the least general.

THE SEPARATION OF WHITE AND COLORED PASSENGERS ON STEAMBOATS

There is comparatively little legislation about white and colored passengers on steamboats. North Carolina is the only State to include steamboats in the regular Jim Crow law [Public Laws of North Carolina, 1899, pp. 539–540]. All steamboat companies engaged as common carriers in the transportation of passengers for hire shall provide separate but equal accommodations for the white and colored races on all steamboats carrying passengers. The violation of this law is punishable by a fine of $100. Each day is considered a separate offense.

On February 9, 1900, the Virginia legislature enacted a statute requiring the separation of white and colored passengers on all steamboats carrying passengers and plying in the waters within the jurisdiction of the State in the sitting, sleeping, and eating apartments, so far as the "construction of the boat and due consideration for comfort of passengers" would permit. There should be no difference in the quality of the accommodations. The law made exception of nurses and attendants traveling with their employers and officers in charge of prisoners. For disobeying the law, the boat officer was guilty of a misdemeanor to be punished by a fine of not less than $25 nor more than $100. The passenger disobeying the law was guilty of a misdemeanor to be punished by a fine of not less than $5 nor more than $50 or imprisonment not less than thirty days, or both. The

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boat officer might eject an offending passenger at any landing place, and neither he nor the steamboat company would be liable [Acts of Virginia, 1899–1900, pp. 340–41]. In 1901, the law was made more stringent by omitting the provision about the construction of the boat and consideration for the comfort of the passengers [Acts of Virginia, extra session, 1901, pp. 329–330].

In 1904, South Carolina required all ferries to have separate cabins for white and colored passengers [Acts of South Carolina, 1904, pp. 438–439].

Up to 1907, this was the only legislation as to steamboats; but it does not measure the separation of the races on steamboats, inasmuch as the companies in the different States have adopted regulations requiring separate accommodations for the races. This custom applies to interstate as well as intrastate travel. For instance, the steamers plying between Boston and the ports of the South provide separate dining tables, separate toilet rooms, and separate smoking rooms for the white and colored passengers. This regulation of interstate travel is upheld by two cases, one in Georgia in 1879 [Green v. *City of Bridgeton*, Fed. Cases, No. 5,754] and the other in Maryland in 1885 [*The Sue*, Fed. Rep., 22: 843], which held substantially that, inasmuch as congress has enacted no law which forbids interstate common carriers from separating white and colored passengers so long as the accommodations are equal, during congressional inaction and State inability to regulate interstate commerce, the companies may make their own regulations.

THE SEPARATION OF WHITE AND COLORED PASSENGERS IN RAILROAD CARS

Omitting the transient Jim Crow laws of Mississippi, Florida, and Texas in 1865–1867 [*ante*], the first State to adopt a comprehensive law to separate the white and colored passengers on railroad cars was Tennessee in 1881 [Laws of Tennessee, 1881, pp. 211–212]. That State stood alone until 1887, when there was a series of Jim Crow laws: Florida, 1887 [Laws of Florida, 1887, p. 116]; Mississippi, 1888 [Laws of Mississippi, 1888, pp. 45 and 48]; Texas, 1889 [Laws of Texas, 1889, pp. 132–133; 1891, pp. 44–45 and 165]; Louisiana, 1890

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[Laws of Louisiana, 1890, pp. 152–154; 1894, pp. 133–134]; Alabama, 1891 [Laws of Alabama, 1891, p. 412]; Kentucky, 1891 [Laws of Kentucky, 1891, pp. 63–64]; Arkansas, 1891 [Laws of Arkansas, 1891, pp. 15–17]; and Georgia, 1891 [Laws of Georgia, 1891, I., 157–158; 1899, pp. 66–67]. For some years there was a period of inactivity, save an amending statute now and then; but in 1898–1899, the other Southern States began to fall into line: South Carolina, 1898 [Laws of South Carolina, 1898, pp. 778–779; 1903, p. 84; 1906, p. 76]; North Carolina, 1899 [Laws of North Carolina, 1899, pp. 539–540]; Virginia, 1899 [Laws of Virginia, 1899–1900, pp. 236–237; 1902–3–4, p. 968; 1904, pp. 183–184]; and Maryland, 1904 [Laws of Maryland, 1904, pp. 187–188]. It appears that Missouri is the only Southern State which has not separated the races in railroad cars.

The requirements of the Jim Crow laws as to railroads are very nearly the same in all the thirteen Southern States. Only two States have seen fit to define persons of color as applied in these laws. Arkansas says that "persons in whom there is a visible and distinct admixture of African blood shall, for the purposes of this act, be deemed to belong to the African race; all others shall be deemed to belong to the white race." Texas makes its law apply to those who are "commonly known as . . . colored people of African descent."

The first great question is the extent of application of the laws. They apply to all railroads doing business in the State. But just what does this mean? It has been generally understood and is confirmed by court decisions [Plessy v. U. S., 163 U. S. 537; O. Val. Ry. Rec. v. Sander, 47 S. W., 344; C. & O. Ry. Co. v. Com. of Ky., 51 S. W., 160; L. N. O. & T. Ry. Co., v. State, 6 S., 203.] that States may pass laws separating passengers going from one point to another in the same State. But what about passengers coming from or going to points outside the State? For instance, suppose a colored passenger were to leave Philadelphia for Evansville, Indiana, and go through Maryland, West Virginia, and Kentucky. Pennsylvania and West Virginia have no Jim Crow laws; Maryland and Kentucky have them. When the colored passenger reached the Maryland line, would he have to enter a car set apart for colored people; when he reached the West Virginia line, might he go back into the coach with white passengers; when he reached the Kentucky line, would he be forced to return to a

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car set apart for his race; and, finally, when he came to Indiana, might he return to the car for white passengers? Or suppose a railroad from Ohio to Indiana has only a few miles of its track in Kentucky and only two depots in that State. Would the railroad have to furnish separate accommodations for the white and colored passengers going between those two points in Kentucky? If these questions had been asked thirty years ago or at the time of the Hall v. Decuir case [*ante*], there is no doubt but that the federal courts would have held that it was an unwarranted interference with interstate commerce or would lead to too much confusion. When Alabama adopted its law in 1891, it had the provision that "this act shall not apply to cases where white or colored passengers enter this State upon such railroads under contract for their transportation made in other States where like laws to this do not prevail." However, since these laws have become so prevalent throughout the South, the courts seem to have swung over to the side of public opinion. In 1889, the supreme court of Mississippi held that the Jim Crow law of that State applied only to intrastate travel, and that it was not an unwarranted burden upon railroads to require them to furnish separate accommodations for the races as soon as they came across the State line [L. N. N. & T. Ry. Co. v. State, 6 S., 203].

In 1894, the Jim Crow law of Kentucky was declared unconstitutional because the language of the act was so comprehensive as to embrace all passengers, whether their passage commenced or ended within the State or otherwise and thus interfere with interstate commerce [Anderson v. L. & N. Ry. Co., 62 Fed., 46]. However, four years later, the court of appeals of Kentucky ruled that the law of that State was not in violation of the fourteenth amendment of the interstate commerce clause of the Federal Constitution; that, if it did apply to interstate passengers, which was not conceded, it should be construed to apply only to transportation within the State [O. Val. Ry. Rec. v. Lander, 47 S. W., 344]. Apparently under this ruling the colored passenger going from West Virginia to Indiana through Kentucky would have to ride in the car provided for his race in that State.

The same year, 1898, the supreme court of Tennessee did hold that it was proper exercise of the police power to require even inter-

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state passengers to occupy separate accommodations while in that State [Smith v. State, 46 S. W., 566].

The last case upon this point, decided April 16, 1907, held that a railroad company may, independent of statute, adopt and enforce rules requiring colored passengers, although they are interstate passengers, to occupy separate coaches or compartments [Chiles v. C. & O. Ry., 101 S. W., 386].

Thus the matter stands. In the absence of a United States supreme court decision upon the point, it would be unsafe to make a generalization. But it is clear that there has been a reaction from Hall vs. Decuir [*ante*]. All the lower courts, both State and federal, are inclined to make the laws apply to all passengers, both intrastate and interstate, so long as they are within the borders of the State.

In a number of the Jim Crow laws, there are special provisions about Pullman cars. Arkansas and Texas say that carriers may haul sleeping or chair cars for the exclusive use of either race separately, but not jointly. Georgia goes farthest in legislation on this point [Laws of Georgia, 1899, p. 67]. In 1899, the legislature provided that, in assigning seats and berths on sleeping cars, white and colored passengers must be separated. " . . . nothing in this act shall be construed to compel sleeping-car companies . . . to carry persons of color in sleeping or parlor cars." The act does not apply to nurses and servants with their employers, and they may enter and ride in the car with their employers. The conductors have police power to enforce the law, and the failure or refusal to do so is punishable as a misdemeanor. In Maryland, North Carolina, and Virginia, the Jim Crow law does not apply to Pullman cars or to through express trains; and in South Carolina, to through vestibule trains.

In a somewhat bewildering case, the court of appeals of Texas, in 1897, held that a colored passenger in a Pullman car, going from a point outside of Texas into that State might be compelled, upon reaching the Texas line, to enter a Pullman car set apart for passengers of his own race, provided the accommodations are equal [Pullman-Palace Car Co. v. Cain, 40 S. W., 220]. This decision is in harmony with those already considered with reference to day coaches.

Two of the States, Arkansas and Louisiana, require separate waiting rooms at railroad depots. In Mississippi, the railroad commis-

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sion was given power in 1888 to designate separate waiting rooms, if it deemed such proper. In most, if not all, of the other Southern States separate waiting rooms are provided by the railroad companies, and this was held constitutional in South Carolina in 1893 [Smith v. Chamberlain, 17 S. E., 371].

The most recent legislation along this line was an act of South Carolina, February 23, 1906, requiring a separation of the races in all station restaurants and eating-houses, imposing a heavy fine upon its violation [Acts of South Carolina, 1906, p. 76]. It is probable that the necessity or propriety of this law was suggested by the disturbance which arose at Hamlet, N. C., near the South Carolina line, when the proprietor of the Seaboard Air Line Railway eating-house at that place allowed a party of negroes, one of whom was Booker T. Washington, to eat in the main dining room, while the white guests were fed in a side room.

There are certain classes of trains to which the Jim Crow laws do not apply. In Arkansas, Kentucky, Maryland, Texas, and Virginia, they do not apply to freight trains carrying passengers in the caboose cars. North and South Carolina exempt narrow-gauge roads from the requirements of the law. North Carolina extends the exemption to branch lines, and South Carolina provides that, where a railroad is under forty miles in length and operates both a daily freight and a passenger train, the law applies only to the passenger train. These two States also except relief trains in case of accident. Whether there is statutory exemption or not, the railway company cannot be held responsible for not separating the passengers in case of an accident [C. & C. Ry. Co. v. Com. of Ky., 84 S. W., 566]. Texas provides that the "provisions of this act shall not apply to any excursion train run strictly as such for the benefit of either race."

Certain classes of passengers do not have to regard the separation of the races on railroad cars. There is an exemption in favor of nurses attending the children or sick of the other race in Florida, Georgia, Kentucky, Louisiana, Maryland, North Carolina, South Carolina, Texas, Virginia. The Florida provision is: " . . . nothing in this act shall be construed to prevent female colored nurses having the care of children or sick persons from riding in such car" (car for white passengers). North Carolina excepts "negro servants in

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attendance on their employers." These two qualifications sound innocent enough, but probably upon a test case they would be declared unconstitutional.[1] It might be considered class legislation in that *colored* nurses and *negro* servants are specifically mentioned instead of exempting nurses and servants in general. In fact, the point has been decided in the case of street-car provisions with similar wording [*post*].

Arkansas, Kentucky, Maryland, Texas, and Virginia exempt the employees of the railroad in the discharge of their duty from the requirements of the Jim Crow laws. Where such exemption is not made in the statute, it must be taken for granted, because it would be manifestly unreasonable to prohibit the white conductor from going into the colored coach to collect tickets or the colored porter from going into the coach for white passengers to regulate the ventilation. However, it may be noted that, in the States where these laws apply, the white conductor assists the white passengers in entering and leaving the cars, while the colored porter attends to the colored passengers.

Most of the States provide that the laws do not apply to officers in charge of prisoners. Arkansas says that "officers accompanying prisoners may be assigned to the coach or room to which said prisoners belong by reason of race." Louisiana whips around and exempts prisoners in "charge of officers" from the Jim Crow laws. The South Carolina law exempts lunatics as well.

The Kentucky law exempts "officers in charge of prisoners." When a sheriff went to take a negro lunatic over the road, the conductor required the lunatic to stay in the colored coach and he gave the sheriff the choice of staying with the lunatic in the colored coach or leaving him and riding in the car for white passengers. The court upheld the conductor, ruling that the exemption applied only to the officers, not to the prisoners also. The law has the same effect as if it said that the officer should ride in the car set apart for the race of the prisoner or lunatic, because it is his duty to guard his charge and, if the prisoner or lunatic must stay in the car for his race, the

[1] The law of Florida was declared unconstitutional in the circuit court, but the contesting parties did not carry it to the supreme court—Letter from the secretary of state of Florida, November 1, 1906.

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officer must stay there with him [L. & N. Ry. Co. v. Catron, 43 S. W., 443].

As to the nature of the accommodations, each of the laws provides in substance that the accommodations for white and colored passengers must be equal. Florida says that the coaches for colored passengers (with first-class ticket) must be equally good and provided with the same facilities for comfort as those for white passengers with first-class tickets. Kentucky, Maryland, and Virginia prohibit any "difference in quality, convenience or accommodation." Tennessee provides that the first-class coaches for colored passengers must "be kept in good repair, and with the same convenience and subject to the same rules governing other first-class cars, preventing smoking and obscene language."

There is no one point upon which the court are more in accord than that there can be no action for damages so long as the accommodations are substantially equal [W. Ches. & Phila. Ry. Co. v. Mills, 52 Pa. S., 209; U. S. v. Dodge, Fed. Cases No. 14, 976; Murphy v. W. & A. Ry. Co., 23 Fed., 637; Logwood v. Mem. & C. Ry. Co., 23 Fed., 318; Houck v. S. Pac. Ry. Co., 38 Fed., 226; Plessy v. Ferguson, 163 U. S., 537; Chilton v. St. L. & I. Mt. Ry. Co., 21 S. W., 457]. The great working principle was enunciated in 1885 in the circuit court of Tennessee: Equality of accommodation does not mean identity of accommodation [Logwood v. Mem. & C. Ry. Co., 23 Fed., 318]. The railroad company is not liable for damages for inequality of accommodation unless it is proved that the plaintiff actually sustained damages by such inequalities [Norwood v. Gal. H. & S. A. Ry. Co., 34 S. W., 180].

The actual separation of the races is accomplished by requiring the railroads to furnish on each passenger train either separate cars or a car divided by a partition. Each State gives the choice. In case of the division of the car into compartments, the partition must, in Arkansas and Kentucky, be made of wood; in Kentucky, Maryland, and Texas, it must be substantial; and in Maryland and Texas, it must have a door in it. Arkansas requires only a partitioned car on roads less than thirty miles long, but separate cars on longer roads, though each train may carry one partitioned car.

Maryland, North Carolina, and Tennessee provide that, in case

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the car or compartment for either race become completely filled and no extra cars can be obtained and the increased number of passengers could not have been foreseen, the conductor may assign a portion of the car or compartment for one race to the passengers of the other race.

Several of the States provide how the public shall be notified of the existence of the Jim Crow requirements. Arkansas requires the law to be posted in each coach and waiting room; Louisiana, in each coach and ticket office; Texas, in each coach and depot. In Kentucky, Maryland, and Texas, each coach or compartment must bear in some conspicuous place appropriate words, in plain letters, to indicate the race for which it was set apart.

There are certain liabilities for the violation of the Jim Crow laws. The three parties concerned are the passenger, the conductor or manager of the train, and railroad company.

If a passenger refuses to occupy the coach or compartment to which he, by his race, belongs, the conductor may refuse to carry him and may eject him if he is already on the train; and for this neither the conductor nor the railroad company is liable for damages. In Georgia and Texas, the conductors are given express power to enforce the law, and in the other States the power must be inferred. Some of the States punish passengers for willfully riding in the wrong car by a fine ranging from a minimum of $5 in Maryland and Texas to a maximum of $1000 in Georgia, or imprisonment from twenty days in Louisiana to six months in Georgia.

The conductor is liable for two kinds of offenses:—(1) for assigning a passenger to a car or compartment to which he does not, by race, belong, and (2) for failing to separate passengers. Most of the States consider the two violations as one. Only Arkansas and Louisiana prescribe separate punishment for assigning passenger to wrong car—a fine of $25 in Arkansas and a fine of $25 or twenty days' imprisonment in Louisiana. Upon this point, a novel case arose in Nansemond county, Virginia, in September, 1907. The conductor compelled a white woman, with tanned skin, to ride in a car set apart for colored passengers. She rode a few miles, left the train at the first station, and brought suit to recover $1000 in damages. It has not yet been settled [*News and Observer*, Raleigh, N. C., September 6, 1907].

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The punishment for refusing to enforce the law is a fine varying from a minimum of $5 in Texas to a maximum of $1000 in Georgia, or, in a few States, imprisonment. In Texas, the fines collected go into the common school fund of the State.

The fine upon railroad companies for failing or refusing to furnish separate accommodations varies between $25 and $1000 for each offense. Each trip that the train makes is a separate offense. However, if the railroad company provides the required separate cars or compartments and the conductor fails to enforce the law or violates its provisions, it is the conductor, not the company, who is liable [L. & N. Ry. Co. v. Com. of Ky., 37 S. W., 79; L. & N. Ry. Co. v. Com. of Ky., 78 S. W., 167].

The Jim Crow laws in the South, so far as railroads are concerned, are very nearly complete. Missouri is the only one of the older Southern States which has not separated the races. In the late constitutional convention of Oklahoma, a Jim Crow provision was suggested but was killed because it was intimated that the president would not approve the constitution if it contained such a clause [*News and Observer*, Raleigh, N. C., March 1, 1907]. Mr. Frederick Upham Adams, speaking of the new constitution of Oklahoma says ". . . the first legislature will certainly submit an amendment, which the people will ratify, compelling transportation corporations to provide separate accommodations for persons of negro blood" [*Saturday Evening Post*, November 16, 1907, p. 4, col. 3]. This prophecy was fulfilled by the last session of legislature.

A special question has been raised by the federal postal cars on which are employed both white and colored clerks. At present, they are obliged to sleep in the same cars, and at the terminals of long runs dormitories are provided for them but without any race separation. The postoffice department has said that such regulation is beyond its control [*News and Observer*, Raleigh, N. C., March 12, 1907]. Thus the matter stands, with a growing discontent on the part of the white postal clerks to be so intimately associated with the colored clerks.

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THE SEPARATION OF WHITE AND COLORED PASSENGERS IN STREET CARS

The third great division of the subject is the separation of the races in street cars. Here is a field of much more active legislation in which much has been done recently and in which much more is likely to be done.

Of the thirteen separate coach laws just considered, six of them—those of Alabama, Arkansas, Louisiana, Mississippi, South Carolina, and Texas—excepted street railroads from their application. It is safe to infer that the laws of the other States referred only to steam cars. Georgia alone made its law all-inclusive, embracing dummy, electric, and street cars.

Excepting the early law of Georgia, 1891, the Jim Crow street-car laws came in with the new century. So far, eight of the Southern States have passed general statutes to separate the races on street cars, in the following order: Georgia, 1891 [*post*], Louisiana, 1902 [Laws of Louisiana, 1902, p. 89]; Arkansas, 1903 [Kirby's *Digest of the Statutes of Arkansas*, 1904, pp. 1211–1212]; Mississippi, 1904 [Laws of Mississippi, 1904, pp. 140–141]; Tennessee, 1905 [Laws of Tennessee, 1905, pp. 321–322]; Florida, 1905 [Laws of Florida, 1905, pp. 99–100]; Virginia, 1906 [Laws of Virginia, 1905–1906, pp. 92–94]; and North Carolina, 1906 [Laws of 1906 not yet published. See *News and Observer*, Raleigh, N. C., March 24, 1907]. Several of the States passed local laws before they made them general. In 1902, the legislature of Virginia separated the white and colored passengers on street cars going between Alexandria and points in Fairfax and Alexandria counties; and in 1901, between Richmond and Seven Pines [Laws of Virginia, 1901–1902, pp. 639–640; 1901, pp. 212–213]. Tennessee, in 1903, made the regular separate coach law apply on street cars in counties having 150,000 inhabitants or over as shown by the census of 1900 or any subsequent federal census [Laws of Tennessee, 1903, p. 75]. This regulation applied only to Memphis. In 1905, South Carolina required the separation of the races on "electric railways outside of the corporate limits of cities and towns" [Laws of South Carolina, 1905, p. 954]. This State has not yet made the law general.

Of the States which have passed laws requiring separate railroad accommodations, South Carolina, Alabama, Kentucky, Maryland,

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and Texas have not extended them to street cars. This does not mean that the races are not separated on street cars. In order to find out the extent of the actual separation, the writer has made inquiry of the mayors of every city of 10,000 or more inhabitants in the Southern States, and West Virginia and Kansas besides. Replies from nearly all of them warrant some generalizations. Not considering the eight States which have general laws, it appears that the white and colored passengers are *not* separated on the street cars of any of the cities of Kansas, Kentucky, Maryland, Missouri, and West Virginia. In the absence of State laws, either the municipal authorities or the street railway companies themselves provide for and require separation in the cities of Alabama and South Carolina. This is the extent of the Jim Crow street-car legislation up to the present.

In their requirements, the ordinances and regulations are practically the same as the statutes for all cities. All of them require that the accommodations for passengers of both races shall be equal. The three methods of separation are (1) separate cars, (2) partitioned cars, and (3) seats assigned to each race. The only city that unqualifiedly requires separate cars is Montgomery, Alabama. The ordinance was passed October 15, 1906, over the mayor's veto, he vetoing it because he believed it would be impracticable. When the law went into effect, November 23, the service was materially reduced because of the scarcity of cars [*News and Observer*, Raleigh, N. C., November 23, 1906]. The State laws of Arkansas, Florida, Louisiana, and Mississippi give the choice of using two or more cars or partitioned cars. A number of the ordinances require that the cars be divided either by movable screens or partitions. They are movable so as to proportion the seating capacity to the requirements of each race. But in by far the greatest number of cases, the separation is accomplished by the conductor assigning white and colored passengers to different seats. Practically without exception, the colored passengers are required to seat from the rear to the front of the car; the white, from the front to the rear. On railroad cars, the colored passengers are almost invariably assigned to the front compartments. The colored passengers on street cars are seated in the rear, to give the reason as stated by the mayor of Birmingham, Alabama, to do "away with the disagreeable odors that would necessarily follow the breezes."

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However, in the closed cars of that city, the colored passengers are seated in front so as to give the white passengers the rear for smoking. In other cities, the two rear seats are reserved for smoking, so the colored passengers begin to sit on the third seat from the rear. As the car fills, the races get nearer and nearer to each other. North Carolina provides that white and colored passengers shall not use contiguous seats on the same bench. Virginia prohibits white and colored passengers from sitting side by side on the same bench unless all the other seats are filled. The conductor has the power to require passengers to change their seats as often as is needful to secure actual separation of the races. The laws do not prohibit the running of special cars exclusively for either race, provided the regular cars are run also.

The cars or compartments are to be clearly designated to show to which race they belong. Several require that the placard "WHITE" or "COLORED," "in plain letters, not less than two inches high," shall be upon each end of the car or compartment or upon the sides of the open cars. A recent case in Mississippi held that the sign must be large enough to be seen in all parts of the car [Walden v. Vicksburg Ry. and Light Co., 40 S., 751]. The laws of Mississippi and Louisiana require that the law be posted in the car; in Virginia, the substance of the law is posted in the car. In Houston, Texas, the race to which the seat belongs is posted on the back of the seat. In several of the cities, it is punishable by a heavy fine to tamper with such a sign.

The law of North Carolina leaves a probably fatal loop-hole in that it requires separation "as far as practicable." Of course, this would allow the conductors to make numberless exceptions. However, as a matter of fact, most of the North Carolina cities had been contemplating such a separation, and, when the law went into effect the first of April, 1907, were ready to regard and enforce it.

In practically all of the cities, the street-car conductors and motormen have police power to enforce the law. For the ejectment of a willfully disobedient passenger, they incur no penalty either upon themselves or the company. North Carolina provides that the conductor shall not be liable if he makes the mistake of assigning a passenger to the wrong seat. In several of the cities, it is the duty of the police officers to arrest passengers whom they see riding in the wrong cars.

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The penalty upon the conductor for failing or refusing to enforce the law varies all the way from a minimum fine of $1 in Montgomery, Alabama, to $500 in Jacksonville, Fla., or imprisonment from one to ninety days.

The liability of the company is equally heavy in proportion. Each trip made without providing for the requirements of the law is considered a separate offense. In Pensacola, Fla., the fine upon the company is $50 a day for not furnishing separate accommodations.

When a passenger consciously disobeys the law, he may be fined; and if he insists upon occupying the wrong seat, the conductor ejects him from the car. In that case, according to the Virginia law, "in case such passenger ejected shall have paid his fare upon said car, he shall not be entitled to any part of said fare."

The only phase of these Jim Crow street-car laws which has given rise to any appreciable discussion is the exemptions from application. Most of the States and cities simply except nurses in attendance upon the children or sick of the other race, the nurse going into the car to which the child or sick person belongs. Of course, the street-car employees are excepted, and Virginia excepts officers in charge of prisoners and lunatics. But Florida and North Carolina say that the law shall not apply to *colored* nurses in attendance upon *white* children or *white* sick people [the italics are the writer's]; and Augusta, Ga., has the same in its ordinance. The constitutionality of the Florida law was tested two years ago in the supreme court of that State, and was declared to violate the fourteenth amendment [State v. Patterson, 39 S., p. 398]. The court said: "It gives to the Caucasian mistress the right to have her child attended in the Caucasian department of the car by its African nurse, and withholds from the African mistress the equal right to have her child attended in the African department by the Caucasian nurse." There is the same discrimination as to the invalid adult Caucasian attended by a colored nurse. As soon as the Florida State law was declared unconstitutional, the cities passed ordinances making the provision apply to nurses of either race. The North Carolina law has not yet been tested; but it has the same defect as the Florida law had.

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CONCLUSION

Such are the Jim Crow laws of the Southern States. It is not the purpose of this paper to discuss how they work in practice, but to analyze the legal distinctions in public conveyances, based on race, leaving the practical discriminations in favor of or against one or the other race for a later study. Perhaps this phase of the subject could not more appropriately be summed up than in a quotation from the decision of the leading case in Philadelphia, 1867 [W. Ches. and Phila. Ry. Co. vs. Mills, 55 Pa. S., 209], because it gives so clearly and concisely the reasoning that those have adopted who believe that such racial distinctions are justifiable.

"The question is one of difference, not of superiority or inferiority. Why the Creator made one black and the other white, we know not, but the fact is apparent, and the races distinct, each producing its own kind, and following the peculiar law of its constitution. Conceding equality, with natures as perfect and rights as sacred, yet God has made them dissimilar, with those natural instincts and feelings which He always imparts to His creatures when He intends that they shall not overstep the natural boundaries He has assigned to them. The natural law forbids their intermarriage, and that social amalgamation which leads to corruption of races is as clearly divine as that which imparts to them different natures. The tendency to intimate social intermixture is to amalgamate, contrary to the law of races. The separation of the white and black races upon the surface of the globe is a fact equally apparent. Why this is so it is not necessary to speculate; but the fact of a distribution of men by race and color is as visible in the providential arrangement of the earth as that of heat and cold. The natural separation of races is therefore an undeniable fact, and all social organizations which lead to their amalgamation is repugnant to the laws of nature. From social amalgamation it is but a step to illicit intercourse, and but another step to intermarriage. But to assert separation is not to declare inferiority in either; it is not to declare one a slave and the other a freeman—that would be to draw illogical sequence of inferiority from difference only. It is sufficient to say that following the order of Divine Providence, human authority ought not to compel those

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widely separated races to intermingle. The right of such to be free from social contact is as clear as to be free from intermarriage. The former may be [a *or* the] less repulsive condition, but not less entitled to protection at a court. When, therefore, we declare a right to maintain separate relations as far as is reasonable [and] practicable, but in a spirit of kindness and charity, and with due regard to equality of rights, it is not prejudice, nor caste, or injustice of any kind, but simply to suffer men to follow the law of races, established by the Creator himself, not to compel them to intermix contrary to their instincts."

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NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Uniform Public Accounting and State Supervision of Accounts. The Indiana legislature in its recent session provided for a state-wide system of uniform public accounting and State supervision of accounts. The law was enacted without serious opposition after an effective campaign by the Merchants' Association of Indianapolis and other commercial and civic bodies.

Uniform accounting has been the subject of considerable theoretical discussion, but as applied to public offices has had little practical application. The literature of the National Municipal League as well as of many other civic and scientific bodies abounds in valuable discussions of the principles involved and advantages to be had in uniform accounts. Economists and publicists are agreed substantially on this subject, but legislatures have been slow to conceive the possibilities of reform involved in its application to public offices.

Many municipalities have installed a uniform system for all offices and accounts of the municipality. The interstate commerce commission prescribes a system of accounts for interstate railroads; the Wisconsin public utility law requires a uniform system of accounts for public utilities whether operated by private companies or by municipalities; and the New York public utility commission is given a similar power to require uniform accounts. These are examples of the application of the system, which is the same in principle whether applied to public utilities or to public offices. Examples of state-wide applications of the system are few, though there are many cases of its practical application in particular classes of offices. Thus several States require uniformity in county or municipal accounts and reports; others extend or limit the system as their needs demand. Wyoming was the first State to apply uniform accounts to all offices and institutions, State and local, and to certain corporations. The office was created by the constitution. It has been highly successful under its able examiner, who has been in office for seventeen years, and the powers of the office have been extended from time to time especially in the matter of investigation. The State of Montana enacted a similar law in 1895 applying to county and State offices and to

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banking and certain other corporations. In 1902 the State of Ohio fell in line with this progressive movement and was the first important commercial State to adopt a comprehensive law. Massachusetts provided for uniform accounts and reports from all municipalities in 1906 and Iowa has also a system of uniform accounts applying to cities having a population of 5000 or more. Colorado adopted a uniform accounting law in 1907 and Indiana has just brought together the experience of these States into a complete and effective measure.

Supervision of accounts and investigation of public offices has gone farther, especially in the grant of discretionary powers to State officials to make investigations of any office at any time. This is a wholesome check upon graft. It has resulted in great good, as in New York, where, by the law of 1905, the comptroller was given power to investigate local offices.

A comprehensive system of uniform accounts, supervision, inspection and reports is provided for in the new Indiana law, which is perhaps the most complete and carefully worked out law on the subject in any State. It was adopted by the legislature without a single material change from the draft of the bill presented by the merchants' association, whose activities were responsible for the sentiment which demanded the law and caused its enactment. The law provides for a State examiner to be appointed by the governor for an indefinite time, subject under the constitution of the State to removal by the governor, at a salary of $4000. Two deputies are also to be appointed by the governor. A sufficient number of field examiners are to be chosen by a system of competitive examination, but not more than one-half can belong to any one political party. The governor, auditor of state and state examiner are constituted a board to install a system of uniform accounts for every public office and every public account of the same class, of the State, counties, townships, cities, towns, and school corporations and all State institutions. The accounts of every office must show in detail the receipt and expenditure of public funds and of the receipt, use, and disposition of public property. Separate accounts of every appropriation or fund of the municipality or institution showing date and manner of payment and the name, address and vocation of the parties to whom any moneys are paid and the authority authorizing such payment are required to be kept and verified. Separate accounts for each department, undertaking and institution, and for every public service industry owned by the municipality, and detailed reports of such public service industry showing the actual condition and cost of service are required.

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The reports of all municipalities subject to the law are to be made to the State examiner on uniform forms and must show in detail each item of receipts from all sources and all expenditures and by what authority authorized, including a statement of the cost of ownership and operation of public service industries owned by the municipality; the public debt and such specific information of the cost of any department as may be required; the revenues from liquor licenses and specific information connected with the same; and the amount of school funds and the investment of such funds.

The reports of the State examiner are to contain a summary of the information received and comparative tables showing the cost of each branch of service for the different municipalities. The uniform accounting and reporting provisions are designed to give an intelligent basis for comparison and to further the object of the law, namely, to eliminate waste and fraud in public office, State and local. The Merchant's Association conducted their campaign for this law upon the platform that one of the greatest evils of the State and the greatest drain upon the resources of the people arose from the wasteful methods of local government, and from the frauds perpetrated in State and local offices. The exposure of several flagrant cases of graft in county offices as well as in State offices, gave impetus to the movement.

The chief examiner is authorized by himself, his deputies, or field examiners to make an investigation of the books of any officer under his supervision at any time and he is required to make such investigation at least once every year. At such time inquiry must be made as to the financial condition and resources of each municipality or institution and into the method and accuracy of the accounts and reports of the office examined. If the examination discloses malfeasance, misfeasance or non-feasance on the part of any officer, the report of that fact shall be filed with the governor who then notifies the attorney-general and proceedings must be brought against the officer on his bond for the amount of funds misappropriated. Penalties are provided for any failure to perform the duties imposed upon any public officer.

The purpose of the framers of the law has been not only to eliminate graft but also to furnish accurate information upon which to base other remedial legislation. The reform of the fee and salary system is an end to be attained by means of the provisions which require detailed statements of the fees collected by every officer for the municipality or for his own use. It is safe to assume that when the people realize the waste which always accompanies the fee system they will demand that

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this easy going means of legalized public graft be abolished completely. The law provides for separate accounts of fees collected, showing the amount paid into the treasury and the amounts retained by the officer. It will be possible from the statistics obtained to determine the cost of local government and a more careful analysis of the problems of State and local taxation will be possible. A similar result for the expense of the administration of justice will be obtained by means of the provision requiring reports of fines and forfeiture to be made by all officers who receive fines and forfeiture. The reports of the chief examiner will form a body of information upon which scientific legislative reforms may be made.

The expense of examination is to be paid by the municipality examined. All other expenses come out of the State treasury. All examinations are to be made without notice to any officer or employee of the office examined. All the powers conferred are additional to the powers of the governor to make examinations and require reports which have been conferred upon him by law. The law is comprehensive and clear. It is somewhat revolutionary in its method, but it cannot fail with proper administration to give needed relief. It has been attacked as an infringement of the right of local self-government. It does limit the power of local officials to do as they please, but the limitation is salutary and will result in more economical government. Local finance is too often a scandal and local control is ineffective to prevent wasteful and fraudulent methods. State control over the municipalities is the remedy applied by this law and however it may seem to violate certain rights of local government it should be commended as the only effective check yet devised upon local extravagance and graft. On this subject it is well to quote the words of Governor Johnson of Minnesota in his recent message to the legislature. Commenting upon the need of a uniform system of accounts and inspection he said: "Two invincible arguments are advanced for such a system of uniform municipal accounting: First, the protection of public funds from irregularities, and second, a statistical presentation of the local budget in such form that taxpayers will be able to make intelligent comparisons of the public revenues and expenditures of their respective towns and counties with other towns and counties of like conditions and population. To bring home to the general taxpayer and voter the properly classified facts in regard to the cost of the several branches of the local government, with comparative statistics for other municipalities of like population, has proved by experience to be the most effective means of producing economical, honest and efficient local government."

JOHN A. LAPP.

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Arbitration Amendment in New Zealand. In December, 1908, the New Zealand parliament passed a bill making some very important changes in the compulsory arbitration law of 1905. The short title of the amendment is the Industrial Conciliation and Arbitration Amendment Act, 1908. It went into effect January 1, 1909.

The new law deals with four matters: (1) Strikes and lockouts, (2) Enforcements of awards and industrial agreements, (3) Conciliation, (4) Miscellaneous amendments.

Strikes and lockouts are carefully defined in the amendment, and are made punishable offenses. Every person who becomes a party to a strike is liable to a penalty of £10, together with a further penalty of £1 for every week during which he continues to strike. Employers who cause or are parties to a lockout are liable to a penalty of £200, with a further penalty of £50, for every week that the lockout continues. For aiding or abetting a strike or lockout the penalty is £10 for a worker, but for a union or an employer or any person other than a worker, the fine is £200.

In certain specified industries, which include public utilities, the manufacture of food supplies and any industry of such a nature that a strike might endanger public health or safety, or result in destruction of property, it is provided that a twenty-one days' notice, in writing, must be given of an intention to strike. For a violation of this section the same penalties are imposed as for a violation of the preceding sections, with the addition that the judge may condemn the offenders to three months imprisonment. Unions or associations which violate the section are liable to have their registration as unions or associations suspended for a period not exceeding three years. If not registered a union can not appear before any conciliation or arbitration board, enter into an industrial agreement, or have its grievances considered.

The enforcement of awards and industrial agreements is very much strengthened by the new law. Every union or employer who commits a breach of an award or agreement is liable to a fine of £5. In default of payment of a penalty by a union, the amount of the judgment may be recovered from the members thereof to the extent of £5 per member. Penalties imposed for breaches of awards or agreements are made recoverable by action in a magistrate's court, and not, as under the old law, by application to the court of arbitration. The judgment in any such action is enforceable in the same manner as any other judgment in the magistrate's court. Any penalty so imposed upon a worker is to be deducted by installments from all wages subsequently earned by him;

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and moneys so to be deducted have priority over assignment or other charge upon wages.

Part III of the amendment deals with conciliation. The permament boards of conciliation established by the act of 1905 are abolished. In their place provision is made for councils of conciliation fashioned after the Canadian boards of conciliation and investigation. A special council is to be appointed for each dispute. Application for the appointment of such a council must be made to a magistrate in the industrial district in which the dispute occurs, by a union or employers' association. The magistrate appoints two assessors, one recommended by each party to the dispute, and these assessors may be parties in the dispute. The two assessors and the magistrate constitute the council of conciliation.

The duty of a council is "to endeavor to bring about a settlement of the dispute, and to this end the council shall, in such manner as it thinks fit, expeditiously and carefully inquire into the dispute and all matters affecting the merits and the right settlement thereof." The magistrate sitting in a council has all the powers of summoning witness, taking evidence on oath and requiring the production of books and papers, as when in the exercise of his jurisdiction as a justice of the peace. No attorneys or solicitors are permitted to come before a council, but the parties to the dispute may appear either in person or by an agent. The councils of conciliation are not to sit as formal tribunals. They do not make awards. They may hear evidence in any manner they see fit. Their duty is merely to bring the parties together in order to effect a settlement.

If a settlement is arrived at and is signed by both parties to the dispute, such an agreement has all the force of an award of the arbitration court. If no agreement is made the dispute goes automatically to the arbitration court, and the council of conciliation makes a recommendation as to what, in its opinion, a fair settlement would be. This recommendation has no binding effect on anyone. It is made merely as a suggestion for the arbitration court to work upon.

The miscellaneous provisions of the act provide for limitation of the right to recover arrears in wages; make the voting power of unions in nominating members of the arbitration court proportionate to their membership; and extend the jurisdiction of the court to make an industrial agreement binding upon a dissenting minority of employers. Provision is also made for adding two assessors to the arbitration court. These are temporarily appointed for each dispute on the recommendation of the parties, and they must be employed or engaged in the particular industry.

WILLIAM MORRIS LEISERSON.

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Automobiles. One of the chief problems considered at the recent sessions of the New England legislatures has been the proper regulation of automobiles, and the attendant problem, good roads and interstate connections. Recognizing the insistence of this problem, Governor Guild of Massachusetts called a conference of New England governors and highway commissioners for the purpose of discussing the question with a view to making suggestions for uniform laws. The conference met in Boston, November 23 and 24. It was well attended and resulted in the clarifying of opinion on the subject. As an outcome of this conference the Massachusttes highway commission, which had been working on a revision of the automobile laws of Massachusetts, was requested to draft a uniform automobile law. The bill was presented to all of the State legislatures in session and it is expected that its main provisions will be adopted. The bill covers the chief problems involved in the regulation of automobiles. In the main it follows the laws in existence in these States, but adds several new features, two of which are important, namely, registration of non-residents, and the classification of fees to be paid. The problem of the non-resident automobilist has always been difficult to settle with justice to the State and to the non-resident. The bill provides that ten days free time will be allowed to non-residents during which the roads of a state may be used without registration in the State. The laws of Massachusetts already fix a limit of seven days; Connecticut ten days; and Rhode Island twenty days. To this is added a provision enabling summer residents to take out a three months' registration for the months of July, August and September at one-half the annual rates. The fees fixed are based upon the motor power of the vehicles and range from $2 for a motor cycle and $5 for a machine of less than ten horse power, to $30 for machines of fifty horse power or over. The funds collected are to be paid into the State treasury for the administration of the law and for the repair of the highways. The need of this last provision is apparent. It has been demonstrated by tests and observation made by the United States government and by the highway commissioner of Connecticut, New Jersey and Massachusetts, that the high powered, low framed and swift moving automobiles are more destructive to the highways than any other form of traffic. The Massachusetts highway commission estimated that the expense of road repair was more than doubled by the destructive effects of automobiles. The bill also provides for the licensing of chauffeurs and the revocation of licenses by the commissioner or other officer without a hearing when they shall deem the operator to be an improper or incompetent person. Uniform speed regulations are also fixed. JOHN A. LAPP.

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Bank Depositors' Guaranty Funds. Oklahoma, Kansas, and Nebraska now provide for the guaranty of bank deposits and the legislatures in New York, Wisconsin, and a number of other States have the plan under consideration. In Oklahoma a law for this purpose was enacted in 1907 (laws, 1907–8, c. 6). Kansas and Nebraska have recently adopted similar enactments. The three laws, however, differ materially in details.

In Oklahoma and Nebraska participation of all State banks is compulsory. In Kansas participation is voluntary, and provision is made for retiring as well as entering. Oklahoma and Kansas provide for the voluntary participation of national banks within their borders. But the rulings of the federal authorities render this feature inoperative.

In Oklahoma the guaranty fund is provided by an assessment upon each bank of 1 per cent of its average daily deposits, not otherwise secured. This fund is to be annually readjusted to the average deposits, and when drawn upon is to be replenished by special assessments prorated to each bank in accordance with its deposits. Newly organized banks are to be assessed 3 per cent of their capital the first year.

In Nebraska banks are to raise the guaranty fund by four instalments, each one-fourth of 1 per cent of their average daily deposits not otherwise secured, the fourth instalment being due the 1st of January, 1911. Banks organized after the enactment of the law are to pay not less than 1 per cent of their average daily deposits for the first year after organization. After the initial payments the guaranty fund is to be maintained by semi-annual assessments, against the capital stock of each bank, equal in amount to one-twentieth of 1 per cent of the average daily deposits. Each bank is to retain the share of the guaranty fund assessed against it, subject, however, to drafts upon it by the state banking board. After the first of January, 1910, the aggregate fund for all banks is to be maintained at not less than 1 per cent of the aggregate daily deposits, by special assessments when necessary, based upon average daily deposits. When required for the immediate payment of depositors, special assessments may be levied for an amount not exceeding one per cent in any one year.

In Kansas, as a pledge of good faith, assenting banks are required to deposit with the State treasurer federal, Kansas, or local bonds to the amount of $500 for every $100,000 or fraction thereof of deposits eligible for guaranty, less capital and surplus. These bonds are not to be charged out of the bank's assets, but are to be carried among the assets under the title Guaranty Fund with State Treasurer. Coupons are to

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be sent by the treasurer to the depositing banks thirty days before maturity. Each bank is to pay annually in cash to the bank depositors' guaranty fund one-twentieth of 1 per cent of its average deposits eligible to guaranty, after deducting capital and surplus, till the fund aggregates $500,000. The bank commissioner is to levy additional assessments to maintain the fund, but not more than five assessments of one-twentieth of 1 per cent shall be levied in any one year. The fund is to be deposited in State depository banks, and credited with interest. The Kansas law makes careful provision as to the deposits eligible for guaranty. Not only are deposits otherwise protected excluded as in Oklahoma and Nebraska, but guaranty is extended only to non-interest bearing deposits, and to such time certificates and savings accounts as allow not more than 3 per cent interest. Moreover, guaranted certificates are not to receive any interest if paid before maturity, nor guaranteed savings account deposits if withdrawn before the first of January or the first of July.

In case of insolvency of any bank in Oklahoma, depositors are to be paid in full out of available cash as far as possible, the remainder to be drawn from the guaranty fund, and from additional assessments if necessary. The State has first lien upon all assets and obligations of stockholders on behalf of the guaranty fund.

In Kansas, when any bank becomes insolvent, depositors are to receive certificates bearing 6 per cent or the contract rate of interest, but whenever any dividend becomes payable interest upon it is to cease. After realizing upon assets and the double liability of stockholders, the bank commissioner shall pay off the balance due guaranteed depositors by drawing upon the guaranty fund. If, after five assessments in a single year, there shall not be sufficient to pay depositors, they shall be paid pro rata, and their remaining claims suspended till the next year.

In Nebraska, if the cash is not sufficient to repay depositors, drafts are to be prorated upon the solvent banks in accordance with the amounts of their holdings of the guaranty fund, and the fund succeeds to the claims of the depositors repaid.

All three laws provide for examinations and penalities in order to secure their faithful observance. None authorizes a bank to advertise that its deposits are guaranteed by the State, but banks may advertise that deposits are guaranteed by the State depositors' guaranty fund.

WILLIAM H. PRICE.

Education—Executive Department of. A bill (S. 7228) to create an executive department of education was introduced by Senator Stephen-

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son in the sixtieth congress. The bill will be reintroduced at the coming regular session. It aims to promote educational interests throughout the United States by adding a secretary of education to the cabinet whose duty it would be to "collect, classify, and disseminate information and advice on all phases of education and to promote, foster, and develop advancement and improvement in the common school system throughout the United States."

The bill also provides for an assistant secretary of education and for such clerical assistants as may from time to time be authorized by congress. Further provision is made for transferring the work of the bureau of education from the department of the interior to the proposed department of education.

Electoral Reforms—Sweden. In February, 1909, both chambers of the riksdag voted by large majorities to establish the system of proportional representation, and to grant universal suffrage to all inhabitants of the country over twenty-four years of age.

The Eight Hour Day on Public Work in New York. The New York labor law, passed in 1897 and 1899, declared unconstitutional, and reënacted, after constitutional amendment, in 1906 (c. 506), has been upheld by the New York court of appeals in the recent case of People vs. Metz (October 13, 1908), 85 N. E. 1070, in so far as it relates to public works.

In view of the well-known case of Atkin vs. Kansas (1903), 191 U. S. 207, wherein it was decided that ". . . . it belongs to the State to prescribe the conditions upon which it will permit public work to be done in its behalf," and, ". . . . it cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose without regard to the wishes of the State." It may seem odd that this portion in the New York statute has been brought into question, but the New York cases differ from those of most of the other States since the element of the State Constitution has figured in them, whereas in most of the others the protection of the Federal Constitution alone has been invoked.

Before the decision in Atkin vs. Kansas, statutes making the eight hour day binding on employers representing the State and on contractors doing work for the state or its representatives, had been held unconstitutional in, ex parte Kuback (1890), 85 Cal. 274, State vs. McNally (1896), 48 La. Ann. 1450, Seattle vs. Smyth (1900), 22 Wash. 327

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Cleveland vs. Clement (1902), 67 Ohio 197. They had been held constitutional in *in re* Ashby (1898), 60 Kas. 101, *in re* Dalton (1899), 61 Kas. 257, and State vs. Atkin (1902), 64 Kas. 174. Since the case of Atkin vs. Kansas similar laws have been upheld in *in re* Broad (1904), 36 Wash. 449, Keefe vs. People (1906), 37 Colo., 317, Penn Bridge Co. vs. U. S. (1907), 29 App. Cas. D. C. 452, and People vs. Metz (1908), 85 N. E. (New York) 1070.

A study of the eight hour legislation of New York alone would furnish material of no ordinary character for an essay on "the evolution of a law." Not only has the present law traveled a long road, but it and its predecessors have had to run the gauntlet of the courts rather oftener than has been the case with similar laws in other States. Even now its safety is assured only as to the hours of labor and the rate of wages on public works, while the right of the legislature to prescribe concerning these would no longer in most States have been questioned.

In 1867 the New York legislature passed a law (c. 856) making eight hours "a legal day's work in all cases of labor as service by the day where there is no contract to the contrary." In 1870 an amendment (c. 385) imposed a penalty for violation of this law by public officers or contractors for public works, but permitted work for longer hours for extra compensation. This law was strengthened in 1894 by a provision (c. 622) which forbade the employment of others than citizens of the United States on public works and required that persons entering into contract with a city must stipulate to pay their workmen "the prevailing rate of wages" in the locality.

In the codification of 1897 the eight hour law was inserted as sec. 3 of ch. 415. In 1899 (c. 567) overtime was prohibited on public work and eight hours was made a maximum, to be exceeded only in cases of extraordinary emergency.[1] Slight details were added in 1900 (c. 298).

In 1901 the law was attacked in the case of People *ex rel* Rodgers vs. Coler, 166 N. Y. 1, wherein it was held that the requirement concerning payment of the "prevailing rate of wages" unlawfully deprived the contractor of his contract and property rights and unlawfully restricted the municipality in its right to contract. The eight hour clause was attacked in the case of Cossey vs. Grout (1904), 179 N. Y. 417. Here the court said that Atkin vs. Kansas had decided that the regulation of such a contract lies with the State and that such a statute does not violate the constitutional rights of the contractor; but as to the other question

[1] For a recent judicial definition of emergency, see Penn Bridge Co. vs. United States, 29 App. Cas. D. C. 452.

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the rights of the municipality, these are guaranteed by the State constitution. Five of the seven judges agreed that the provision in question violated the New York constitution.

To remedy these various difficulties an amendment to the New York constitution was proposed. Sec. 1 of art. 12 of the constitution read: "It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, etc. . . . . so as to prevent abuses in assessment and in contracting debt by such municipal corporations. The amendment to this article proposed by the senate and assembly by concurrent resolution (1902–3), was passed by the people by 338,570 to 133,606 votes in 1905, and went into effect January 1, 1906. This amendment reads as follows: "and the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare, and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or sub-contractor performing work, labor or services for the State or for any county, city, town, village or other civil division thereof."

In 1906 the legislature reënacted the statutes of 1897 and 1899. This law (1906, c. 506) makes eight hours a legal day's work for all employees except those engaged in farm labor or domestic service, but permits an agreement for overtime at increased compensation, except for work done by or for municipal corporations by contractors therewith, and requires specifications for an eight hour day, except in cases of emergency caused by fire, flood or danger to life or property, in contracts with the latter. It exempts also persons employed in State institutions, engineers, elevator men, etc., in public buildings during the legislative session, and laborers engaged in the construction and repair of highways outside the limits of cities.

This was the law which was brought into question in the case of People vs. Metz. The case involved payment for the work done by a contractor with a municipality, who had violated the eight hour provision as regarded his employees. The court upheld the law, but declined to consider it any further than as it bore upon the question of public work. Prior to the amendment, the State could not thus restrict the rights of the municipality in making contracts. The amendment was undoubtedly framed with a definite purpose. It must mean that the people were giving the legislature a power which it had not previously possessed. This power covers the right to make such legislation as the statute in question. In answer to the charge that the exemption of cer-

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tain classes of labor rendered the law invalid as class legislation, the court replied: First, as regards the exception of persons employed in state institutions, "we do not regard this classification as arbitrary or capricious within the rule governing the subject, for it has some reason to support it, and hence was within the power of the legislature. Employees with duties to be discharged by night time or partly by day and partly by night. . . . and those who operate the machinery for lighting and heating the State capitol when the State legislature is in session, may properly receive separate classification in order to prevent public injury and inconvenience. Here also, the State was dealing with its own agencies and had the right to promote its convenience and welfare by making a distinction between those who perform manual labor for the most part and those who work largely with their brains. The one class of duties involves greater bodily fatigue than the other . . . ." Second, concerning the exemption of those employed in working upon highways outside the limits of cities and villages: "This is in conformity with the custom in rural districts, where it may be argued the crops could neither be planted nor harvested by laboring eight hours a day. The reason for the distinction may not be conclusive, but it will support an argument, which is sufficient. . . . The law requires equality only among those similarly situated and this rule we think was observed in the statute in question." Finally ". . . . in the legislation in question the State was dealing with its own creations and could discriminate as it saw fit."

In view of this decision we may regard the eight hour day for labor on public work in New York as definitely established. This adds New York to a list which already includes California, Colorado, Kansas, Massachusetts, Montana, Oklahoma, Oregon, the District of Columbia, Hawaii, and Panama.

STANLEY K. HORNBECK.

Income Tax—France. The graduated income tax bill was passed in the French chamber of deputies on March 9. The vote stood 407 to 166. The bill now goes to the senate, where it is expected to meet with considerable opposition.

The proposed tax is to take the place of present taxes on real estate, personal property, doors and windows, on stocks and bonds, and on commercial transfers. The rates are fixed at 4 per cent on incomes from real estate, stocks, bonds, and other forms of capital, except savings deposits; 3½ per cent on incomes from commercial and industrial enter-

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prises, and from farm production; and 3 per cent on salaries and pensions above $250 a year.

A complementary tax at a progressive rate is also proposed upon all incomes over $1000. The rate reaches 4 per cent on incomes above $20,000. The income of foreign residents is to be estimated at seven times the amount of rent they pay. In general the bill seems to discriminate in favor of incomes from work rather than from capital.

Industrial Hygiene. The example of the International Association for Labor Legislation in securing governmental coöperation in the investigation of occupational diseases is being followed by the American branch of the Association.

A bill (580 A.) introduced in the Wisconsin legislature on February 16, 1909, makes it the duty of the commissioner of labor and industrial statistics "to investigate, collect and publish all available information upon the subject of industrial hygiene, including the conditions that retard, or promote the health, vitality, energy and industrial efficiency of wage-earners in Wisconsin, and to inquire into measures and means of promoting the coöperation of employers and wage-earners toward the improvement of physique and industrial efficiency of the working people of the State." The bill carries an annual appropriation of $5000 for a period of two years.

Labor Legislation—Oklahoma. In keeping with the recent though somewhat tardy movement in the South, Oklahoma has gone farther in a single step toward the protection and regulation of the employment of labor than have many of her sister States in the entire period of their history.

The legislature passed several laws during the 1908 session centering around the commission of labor, a State board of arbitration and conciliation and a free employment bureau, and dealing with the subjects of factory inspection, child labor, blacklisting, combinations, agreements, and conspiracy.

The creation of a department of labor to be under the control of a commissioner of labor, elected by the people, was provided for by the constitution (art. VI, Sec. 20). The exact duties of the commissioner were to be later prescribed by law and were so prescribed at the last session (Laws, 1908, c. 53). It was made his duty to enforce all laws in relation to labor passed by the legislature, to supervise the work of a

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free employment bureau, to superintend the work of factory inspection, to collect, assort and systematize reports received and present them to the legislature, and to compile detailed statistical reports relating to the commercial, industrial, educational, and sanitary conditions of the people engaged in mining, transportation, mechanical, and manufacturing industries—tasks not radically different from those usually imposed on the commissioner of labor in other states.

The constitution also provides for a board of arbitration and conciliation and makes the commissioner of labor ex-officio chairman. The law goes more into detail. The governor is to appoint, upon his own motion, two farmers and one employer and upon the recommendation of the commissioner of labor one employer and two employees. This group of men together with the commissioner of labor are to be known as the State board of arbitration and conciliation. This board, however, has but little real power and the power that it does possess is the power of public opinion made possible by means of publicity.

Whenever the State board of arbitration and conciliation learns that a strike or lockout involving twenty-five or more men is seriously threatened it must put itself into communication with the employers or employees as soon as possible and endeavor to persuade them to submit the matter in dispute to arbitration. Naturally, the board will not know of every threatened strike or lockout and in order to increase their influence it is made the duty of the mayor of every city and the justice of the peace of every municipal township to communicate with the State board of arbitration and conciliation whenever a strike of any consequence has actually occurred or is threatened. This report must state the name or names of the employer or employers and the name or names of one or more of the employees; the nature of the controversy, the number of employees involved, and other information required by the board. In addition to this it is made the duty of the president or executive officer of every labor organization to communicate the facts relating to any strike or lockout to the board with any information he possesses as to the nature of the difference and the extent of the strike.

Neither party can be compelled to arbitrate the dispute, but if the board concludes that the general public is likely to suffer it may upon its own motion make an investigation of all facts bearing on the case and publish its findings with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences causing the strike or lockout. In the prosecution of this inquiry the board has power to issue subpœnas to compel the attendance

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of witnesses; these subpœnas to be enforceable in the final resort by the courts.

When the board is about to be engaged or is actually engaged in the performance of its duties, no order of injunction can lie against it from any court in the State except the supreme court, and the order of injunction if granted is not to be made final until the court by competent evidence is satisfied that the board is abusing or transgressing its privileges and duties.

Judging from the past history of similar boards in other States this board will have a power and influence depending entirely upon the willingness of the parties to submit their case and that in turn depending largely upon the confidence and trust the contesting parties have in the board.

The free employment bureau is maintained in connection with the office of commissioner of labor. The commissioner of labor is not to do the actual work himself, but is to appoint a superintendent to serve during his own term or until removed for cause. The work of this bureau is to be carried on in much the same manner as the work of all employment bureaus is carried on. The superintendent is to put himself in communication with the principal employers of labor, he may advertise under the direction of the commissioner of labor for such situations as he has applicants to fill and may also advertise in a general way in trade journals or special publications whether the trade be pursued or the journal published within the State or not. No fee or compensation is to be charged or received from persons applying for employment or help through the bureau.

The establishment of a free employment bureau does not prevent any person from maintaining a private employment bureau if he pays the required license fee and obeys the law with regard to fees, return of fees, and employment given.

The governor, upon the recommendation of the commissioner of labor, and with the consent of the senate, is also to appoint a factory inspector whose general duty is to supervise the work of factory inspection. Fortunately the legislature was not content with this expression of general duties, but placed the factory inspector under the commissioner of labor, gave him the specific duty of visiting and inspecting the factories, workshops, machine shops, foundries, laundries, manufacturing establishments and such other places where labor is employed as the commissioner of labor may designate; required him to make special investigations into the condition of labor or into any alleged abuses in

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connection with labor; and stated that he should collect and compile statistical details and information.

The actual enforcement of the law is to be done by the county attorney upon request of the State factory inspector.

The Oklahoma law also considers the question of child labor, but does not give it detailed consideration. Every person, firm, or corporation employing children is to keep a register containing the name, place of birth, age, sex, and place of residence of every person employed under the age of sixteen; children under that age cannot be employed unless an affidavit stating these facts is made by the parent or guardian, and placed on file.

The time when certain persons may be employed is limited. Boys under sixteen and girls under eighteen are not permitted to work in any factory or shop between the hours of six in the evening and six in the morning.

The factory inspector may demand certificates of physical fitness from some licensed physician in the case of children who appear physically unable to perform the labor at which they are employed, and unless the certificate is obtained he has power to prohibit the employment of any person in question.

The labor of healthy children is not forbidden, but if the law as passed is rigidly enforced some of the worst evils of child labor will be done away with.

The law under the head of blacklisting really contains nothing to prevent or even forbid employers from keeping lists and memoranda of men objectionable to them. The law simply states that whenever any employee of any public service corporation is discharged or voluntarily quits the service, the superintendent or manager or contractor must, upon request of the employee, issue a letter to him setting forth the nature of the work done, the duration of the service rendered and the cause of discharge or voluntary cessation of work. To refuse such a request or wilfully or negligently to fail to state the facts correctly is made a misdemeanor punishable by fine and imprisonment. The requirements of the letter are in brief that it shall tell the truth and that it shall not convey any information by a secret method concealed in signs, marks, imprints, designs, or characters. The object of the law is to compel the employer to give the employee an honest statement of the reason for dismissal or cessation of work, put that statement on plain white paper, without mark or symbol. If this were not required to be done on plain paper, the employer might write an honest enough state-

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ment of the case but use a particular kind of paper or make marks or characters the meaning of which was known to all employers. If this were permitted it would be difficult to imagine a more simple or effective method of blacklisting; every discharged employee would carry his own condemnation with him wherever he went in search of work.

The laborer is protected in other ways. Forced agreements are forbidden. Persons, corporations, their agents or officers, are not allowed to compel any person to enter into an agreement, either written or verbal, not to join or be a member of any labor organization as a condition of his securing employment or continuing at his present employment.

Conspiracy among laborers is defined in a way favorable to labor. No agreement, combination or contract by or between two or more persons to do or not to do anything in contemplation or furtherance of any trade dispute between employers and employees is to be deemed as criminal nor are those engaged to be indictable or otherwise punishable for the crime of conspiracy, if the same act committed by one person would not be punishable as a crime. Such agreements, combinations or contracts are not to be considered as in restraint of trade or commerce nor is any restraining order or injunction to be issued against such procedure. This act, however, is not to be construed as authorizing force or violence.

Strike breakers are also legislated against. It is made unlawful for any company, corporation, or other employer of labor to induce, persuade or engage workmen to change from one place to another in the State or to bring workmen into the State by means of false advertising or false pretenses concerning the kind and character of the work to be done, or the amount and character of the compensation to be paid, or the sanitary or other conditions of employment, or the existence or non-existence of a strike or other trouble pending between employer and employees, at the time of or prior to the engagement. Failure to state in an advertisement, proposal, or contract that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such labor difficulties did exist, is to be deemed a false advertisement and misrepresentation and is punishable by fine or imprisonment or both.

Any person or his agent hiring men to guard other persons or property, or any one coming into the State armed for any such purpose without a permit in writing, from the governor of the State, is to be deemed guilty of a felony and on conviction subject to imprisonment. This act is not to be construed as interfering with the rights of any person or corporation in guarding and protecting their property as is provided

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by law, but it is to be construed as applying in cases where workmen are brought into the State or induced to go from one place to another in the State by any false pretenses, false advertising or deceptive representation, or brought into the State under arms or removed from one place to another within the State under arms.

ROBERT ARGYLL CAMPBELL.

Legislative Reference. The first legislative reference department in the United States was established in the New York State library in 1890. In 1901 the Wisconsin legislature passed a law authorizing the establishment of a department and since then like departments have been created by law in Indiana, Rhode Island, North and South Dakota, and Michigan, while in the States of Alabama, California, Nebraska, Iowa, Oregon, Montana, Virginia, Washington and North Carolina the work has been taken up by the State librarians without special authority from the legislature. In Maryland the work is carried on by the city of Baltimore under the authority of the State legislature. Up to this time (March) in the 1909 sessions, bills creating or investigating the need of such a department have been introduced in Idaho, Illinois, Kansas, Massachusetts, Missouri, Montana, and for a drafting bureau in North Dakota in connection with the reference department already established there.

In Idaho the bill provides for a legislative advisory board of three members, only two of whom can belong to the same political party, appointed by the governor to serve for two years or until their successors are appointed. They must have been regularly admitted to practice in the supreme court of the State and in active practice in the state at least three years. The board is to act, as its name indicates, merely in an advisory capacity, and its duty is not in the true sense that of a legislative reference department. They are to receive $15 per day from the commencement of the legislature, per diem, not to exceed $900, mileage and $300 each for stenographic work per session.

The Illinois bill creates a legislative aid commission. It is the duty of the commission to establish a legislative aid department divided into a legislative reference division and a legislative drafting division, to appoint a librarian and a draftsman for their respective departments, and other necessary clerical force. The legislative reference division is to establish a library, collect and arrange material and give the fullest available information upon all matters respecting the subject. The legislative drafting division must give such aid and assistance in the

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drafting of bills and resolutions as may be requested by members of the general assembly and State officers, also to examine, so far as practicable, all bills that reach the order of second reading and to report in writing to the clerk of the house or the secretary of the senate, as the case may be, any amendments which, in the opinion of the legislative draftsman, should be made so that same may conform to the constitution and harmonize with the laws of the State.

In Kansas two bills were introduced. The purpose of one of the bills was to secure an entirely non-partisan department. It follows the general plan of the very successful department at Baltimore, Maryland, and places the appointments of the chief of the legislative reference library in the hands of a board of directors consisting of the State librarian, the chancellor of the State university, and the head of the department of political science in the State university. The appointment of the secretary and the stenographer of the department is also placed with this board of directors. Provision is further made that the chief of the department devote a portion of the time when the legislature is not in session to instructing students at the State university, training them in legislative reference work so that they may be able to employ the resources of the university and assist in supplying "any data available, regarding the laws of this State and other States and the working and results of such laws in active practice, together with references to judicial decisions and interpretations upon such laws," and such other "current information upon legislation as will make all data upon such subjects of present value." This bill, prepared by two leading members of the house—the one a republican and the other a democrat—made a decisive impression upon the legislature; but lack of time for due consideration of the whole question during the present session induced the legislature to postpone action on the proposed connection of the department with the State university. Another bill introduced early in the session was amended and enacted so as to provide for a beginning in reference work. The bill as enacted provides for the appointment of a cataloger and a stenographer to work under the direction of the State librarian in the collection of legislative data.

The bill introduced in Massachusetts is the only one that provides for a commission to investigate and report as to the "advisability, advantages, if any, and expense of establishing a legislative reference department in the State library similar to or in accordance with other reference libraries."

The bill introduced in Missouri to create the "Library of the General

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Assembly of the State of Missouri" is intended only for service to the members of the assembly and is to contain statutes, session acts, Missouri State documents and such other material as the assembly may desire. During the session the library is under the control of a commission composed of three representatives and three senators, and at other times is under the control of the secretary of State. One clerk from the house and one from the senate are appointed by the commission to act as librarians during the session. The bill does not provide the legislator with the kind of a library that gives him the aid and assistance he wants or needs, but it is a step toward the desired end.

The Montana bill creates the legislative reference bureau composed of five members. The bureau is to establish for the use and information of any one, impartially and without political bias, a legislative reference library to be placed under the direction of two assistant librarians, one appointed by the State law librarian and one by the librarian of the historical and miscellaneous library. Salary $1200 each per annum. The bureau may employ two or more draftsmen who are skilled in the drawing of legislative bills and have been in the active practice of their profession in the State for at least ten years. They are to be employed during the sessions and thirty days before at a salary of $250 per month. The department is to be furnished with twenty copies of the laws, all official publications, of each bill printed and is authorized to exchange publications with other like departments of the several States.

The bill introduced in North Dakota this year provides for a legislative drafting bureau in connection with the legislative reference department established in 1907. Three competent persons, learned in law, may be employed twenty days before and during the session. All bills and resolutions drawn by the department must have endorsed thereon "drawn by the legislative drafting bureau" and every bill and resolution not drawn by the department must be submitted to it for examination before its introduction. All bills and resolutions amended by committee, prior to a favorable report, must be submitted to the department for examination of the legality and phraseolgy of such amendments.

A bill creating such a department in Pennsylvania was introduced in the 1907 session but failed to pass. The governor in his message to the general assembly, 1909 session, recommends a Legislative reference division in the State library. He says, "It is unreasonable to expect that those members of the legislature who are not lawyers should be able to prepare bills upon every subject that may come before the general assembly. In order that they should have every reasonable assistance,

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I recommend that authority be given for the appointment of a custodian of the law division of the State library, learned in law, whose duty it shall be to establish a legislative reference department, furnish information to legislators, and to assist them in the preparation of bills."

EDGAR A. FISHER.

Metropolitan Police. The State control of the police of certain cities in Indiana was released by a law which went into effect with an emergency clause March 4, 1909. Under the provisions of the old law which was passed in 1897, the governor appointed the boards of police commissioners in all cities having between 10,000 and 35,000 inhabitants. The new law retains the police commissioners, but makes them appointive by the mayor. This subject has been a bone of contention ever since the passage of the law. It was adopted and retained on the theory that the police force is an arm of the State, and not of the city, and that the enforcement of State laws was dependent on State control.

A bill was passed in the session of 1907 repealing the law, but it was vetoed by Governor Hanly, in a strong veto message, in which the relation of the police to the State was ably discussed and the constitutionality of the law upheld. Sentiment was strongly against the law. Governor Marshall in his message said, "The metropolitan police law is a violation of the doctrine of local self-government. I recommend its immediate repeal." The repeal passed both houses with a total of only nineteen votes in opposition in both houses. The law went into effect at once and new police boards have been appointed in the cities to which the law applies.

EDGAR A. FISHER.

The Legislative Program of the Social-Democratic (Socialist) Party in the Wisconsin Legislative Session of 1909[1]. As the social-democratic party is the official representative on the political field of the organized working class of Wisconsin, it was perfectly natural that the legislative program of the party should be formulated jointly by representatives of the Wisconsin State Federation of Labor and the Milwaukee Federated Trades Council, together with the State executive board of the party itself, and in collaboration with the members of the State legislature elected on the social-democratic ticket.

[1] The following summary of social-democratic activities in the Wisconsin legislature was written by State Senator Winfield R. Gaylord. The party has three assemblymen and one senator in the present legislature. Senator Gaylord has been the socialist candidate for governor of Wisconsin and has exerted great influence in shaping the policy of the socialist party in the United States.

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The legislative plan of the social-democratic fraction of the legislature falls naturally into five general divisions, commensurate with the spheres with which the respective bills and resolutions aim to deal, namely: (1) national and international problems, dealt with by means of joint resolutions in the form of memorials to congress and to the other States of the Union; (2) amendments to the State constitution, and propositions other than statutory dealing with State problems; (3) bills proposed and mainly formulated by and in the interests of wage workers and especially aiming to benefit organized labor; (4) bills affecting municipal problems and municipal utilities; and (5) general bills affecting problems of the working class and society in the State at large.

Under these several classifications the individual legislative propositions of the social-democratic party are as follows:

National and International Questions. Of the international propositions, one asks for the abrogation of the existing extradition treaty with Russia, and another aims to promote international peace.

Of the strictly national measures, three resolutions aim to influence congress in the matter of taking over (*a*) all railroads which pass into the hands of a federal receiver, (*b*) all railroads, express companies, telegraph and telephone plants, and (*c*) all trusts and monopolies.

One resolution asks the various States to unite in calling a national constitutional convention; one asks for a constitutional amendment to the effect that federal judges be elected and not appointed; and one asks for the abolition of the United States senate.

Two resolutions aim respectively at the "injunction" and the Sherman anti-trust law. Two others respectively petition for the establishment of the parcels post and the postal savings bank.

Of special interest to organized labor are the three resolutions which deal respectively with old age pensions, oppose coolie and Mongolian labor immigration, and ask national provision for the unemployed.

Amendments to the State Constitution. Five joint resolutions ask for various amendments to the State constitution. One of these calls for a State constitutional convention, two deal respectively with woman suffrage, and the establishment of a State printing plant, while one provides against the employment of persons not citizens of the State upon State contracts. The remaining one of these aims at a removal of the existing limitations upon the power of the State to enter into internal improvements and to give the State power to develop all the natural resources of the State for the benefit of the people.

Labor Problems. Twenty bills deal specifically with labor conditions and labor problems, as follows:

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Hardships of labor in the courts are dealt with by four bills, asking (*a*) that vagrancy be not punishable except on proof of refusal to work, (*b*) providing one week's notice before garnishment proceedings, (*c*) aiding the conduct of poor persons in courts, and (*d*) providing that the anti-trust laws of the State shall not apply to organizations of wage-workers and farmers.

Three child-labor bills aim respectively at (*a*) still further restricting the employment of children as to hours and occupations, (*b*) providing that no child under sixteen shall be compelled to work to support poor relatives, and (*c*) prohibiting children under fourteen from carrying newspapers before 7 a.m. or after 8 p.m.

Eight bills bear upon hours and conditions of labor, (*a*) limiting the hours of labor for women, (*b*) providing for the publication of labor contracts, (*c*) ventilation of mercantile and manufacturing establishments, (*d*) providing for thirty-six hours of consecutive rest in seven days, (*e*) weekly payment of wages in cash, (*f*) laying of temporary floors at every story of new buildings, and (*g*) limiting bakery employees to an average workday of ten hours.

Trade disputes are handled in two bills, one of which aims to forbid the use of private detectives; the other providing (*a*) that trade unions shall have the right peacefully to obtain information, (*b*) and to peacefully persuade any person to quit work, (*c*) allowing two or more persons to coöperate in a trade dispute, and (*d*) providing that no union shall be sued for damages caused by a member of the same.

Two new things in American labor laws are found in the carefully worked out compensation act, which provides that employers shall compensate for injuries incurred by employees while at work; and in the bill providing that the railway rate commission shall make an established minimum rate of wages and maximum hours of labor (as fixed by bona fide unions affiliated with the American Federation of Labor) part of the factors used as a basis in calculating rates, charges or earnings of public utilities.

There is also a bill giving to the State bureau of labor and statistics the power to investigate the question of unemployment, together with its social and economic effect upon society.

Municipal Affairs. Municipal problems are approached through the medium of eleven bills, three of which deal with public utility franchises: (*a*) forfeiting franchises held for speculation, (*b*) making every franchise granted prior to July 9, 1907, an "indeterminate franchise" within the meaning of the public utility law, and (*c*) fixing terms for the

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granting of all future franchises. The purchase of public utilities is provided for in one bill, and another would compel air brakes on all street cars.

Under the public works policy of the party will be noted one bill providing on a broad basis for a public works department for the city of Milwaukee, while another provides that the city of Milwaukee may establish a municipal plumbing business.

Direct legislation appears in three bills, which aim (*a*) to provide for the the recall of any county, city, town or village officer, (*b*) for the initiative and referendum on acts of municipal councils and county boards, and (*c*) the amendment of city charters by direct action of the people.

A social-democratic justice of the peace in Milwaukee is the author of the bill aiming to abolish the abuses of the justice courts, by placing constable and justices on a salary basis, and providing a clerk of the justices' courts who shall assign all cases for trial as they are initiated before him.

Two companion bills, carefully drawn to avoid the pit-falls indicated by the fate of a law passed at the last session, but declared unconstitutional by the supreme court of the State, provide for the regulation of tenement and lodging houses.

General Social Problems. Of the bills affecting State affairs, two aim at the public utility corporations, holding railway officials responsisible for murder in case of preventable accidents, and holding telegraph companies for the failure to deliver messages.

The provisions of the present law that judges of the county courts must be attorneys-at-law is sought to be abolished; it is sought to establish the semi-annual payment of taxes, and the valuation of land for public purchase by adding 10 per cent to the last previous assessed valuation thereof; free text books throughout the State; and provision for the care of families and dependents of convicted persons—to prevent the growth of a criminal class: all of these are proposed by specific bills.

One joint resolution calls for an extensive investigation of the liquor traffic, previous to the passage of any sumptuary laws.

A complicated bill amending the election laws, the outcome of the experience of the party, and of extensive investigations by the party officials at the last State election, is also on the list.

Probably the most characteristically socialist measure is the bill providing for a State board of public works, aiming to retain and regain the natural resources of the State in the possession of the people, the aiding of settlers on State lands, the operation on a more extensive scale

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of the forestry department, the development of mines and water-powers under State enterprise, and all for the purpose of protecting the people of the State against the concentration of wealth and for the meeting and solution of the unemployed problem.

One of the leading attorneys of the State, who is also a member of the social-democratic party, has prepared nearly thirty bills, aiming to remedy various legal iniquities and hardships of poorer people especially, as well as certain antiquated or unjust matters of court procedure. These bills have been introduced "by request," and the attorney is furnishing briefs for the bills as they come up. Most of them are looked upon with favor by the best attorneys in the legislature, and many of them will also doubtless pass.

Of the strictly party and labor bills, it may be said that they indicate a policy substantially as follows:

1. To democratize the processes of the State government as such, by direct legislation, and by home rule for local units of government.
2. To loosen the hands of the State as regards the undertaking of industrial and other enterprises.
3. To progressively substitute the policy of ownership by the people and direct operation, for the present policy of regulation for the benefit of the owners, in the matter of public utilities.
4. To shorten the hours, improve the conditions, and increase the wages of labor, while progressively eliminating child labor.
5. In general to substitute intelligent and planful social processes for sumptuary legislation in the matter of social evils and abuse.

WINFIELD R. GAYLORD.

Stream Pollution. The growth of population and development of urban life has drawn the attention of the people sharply to the dangerous conditions arising from the pollution of streams by sewage and by the waste from manufacturing establishments. Public health authorities have sounded the warning against this new danger to the public health. Conferences have been held by health officials to discuss this important problem, and a body of literature contained in official reports has developed. Formerly this was purely a municipal problem and was dealt with by the city authorities. Their problem was solved generally when means were provided for dumping their sewage into a stream which thus became a natural sewer. This means of disposal was sufficient until cities became so numerous or so large that the sewage of one

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polluted the water supply of another. The famous case involving the discharge of sewage by the city of Chicago into the drainage canal and thence into the Illinois and Mississippi, which polluted the water supply of St. Louis, was instructive on this point and drew attention sharply to the subject.

The problem is complicated by conditions which prevent complete relief. It is impossible to enforce a change of methods when such change involves an expenditure of money by a municipality or by a manufacturing plant in order to comply with the law, which would be beyond the reasonable ability of the municipality or company to pay. Thus a city which has already established a system to convey its sewage into a stream might be embarrassed if it were compelled to abandon it and establish an expensive sewage disposal plant. A manufacturing concern might by the same means be compelled to reëstablish its plant at an expense which would be confiscatory. Yet it is a well settled doctrine that the riparian owners below have a right to have the water of a stream come to them in its ordinary pure condition. Just as riparian owners are not allowed to divert the water of a stream to an extent greater than for their ordinary needs, so are they prohibited from polluting it unreasonably to the detriment of owners below. Among the States which have attempted to deal with this problem are, Pennsylvania, Massachusetts, Ohio, Montana, New York and Indiana. The provisions of the laws of these States are in general made applicable to future construction and have not produced practical results. In New York, Governor Hughes recently called attention to the conditions resulting from stream pollution. In his message of January 6, 1909, he said that the present laws were inadequate and should be revised. "So far as sewage is concerned" he said, "we should have legislation under which local communities may be compelled without undue delay to make provisions for suitable disposal." In the case of industrial wastes he contends that "where there are processes for disposal which are not prohibitive in cost their adoption should be insisted upon and in other cases if it is not deemed advisable to impose restriction we should at least provide for proper experimentation under State authority in order that as soon as possible means may be devised for complete protection of our streams from pollution without industrial dislocation." He asked for legislation to remedy what he called the makeshift law of 1903 and to give power and means to the State board of health to conduct researches into the problem. Likewise Governor Pothier of Rhode Island emphasized the need of relief by immediate action where possible and investigation

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for permanent relief in other cases, and Governor Stuart of Pennsylvania in his message commends the efforts made in that State to rid the streams of pollution by the coöperation of municipalities and the State health authorities to that end.

Indiana in the recent session of the general assembly passed a law which follows in general the lines laid down in the statutes of Ohio, New York and Pennsylvania: the law is largely for the prevention of the growth of the evil, though in certain cases power is given to the State board of health to prevent stream pollution when the same becomes dangerous to the public health. The power granted in this law is lodged in the State board of health. Complaint may be made by the common council or board of health of any city or town, or by the board of county commissioners, or township trustees to the State board of health, that any municipality, person, or corporation is befouling the waters of a stream to the detriment of the public, and after a public hearing the State board of health may order such changes as will prevent further pollution, giving a reasonable time for complying with the order unless the stream polluted is a public water supply, in which case the order shall take effect at once. From the decision of the State board of health, any party aggrieved may appeal and have a further hearing before a board of sanitary engineers, appointed in each case for the purpose. A further appeal lies to the courts as to the necessity and reasonableness of the order of the State board of health. Power is also given to the State board of health to investigate the water supply of any city or town on complaint setting forth that the water supply is contaminated and the board may issue such corrective orders as may be necessary. The law is an advance over the laws heretofore enacted. It clothes the State board of health with important powers, and with coöperation the board should be able to materially lessen the evil.

JOHN A. LAPP.

Taxation—Constitutional Provisions—Adopted and Rejected in 1908. At the last general election some nineteen proposed constitutional amendments relating to taxation were voted on and only the five following received the approval of the people: in Missouri one relating to taxation for highway purposes; in Texas one levying a tax for school purposes; in Wisconsin one for an income tax, and one for a levy for the construction and improvement of highways; and in Louisiana one for the exemption of mortgages.

California refused to provide for the separation of the sources of State

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and local revenue, or even to repeal the mortgage tax law; Missouri was of the same opinion with regard to the separation of the sources and rejected one of the highway amendments; South Dakota refused to adopt general provisions in place of specific and turned down the income tax proposition; Ohio and Washington agreed with South Dakota that general provisions could not be adopted at the expense of specific restrictions and limitations; Minnesota refused every amendment offered,—the taxation of church property unless used for religious purposes, the highway and bridge tax, and the tax to provide for payment in case of loss from wind and hail; Montana and Utah both refused to change the existing tax rate on property and Texas did not give the road and bridge tax favorable consideration.

Both constitutional amendments relating to revenue and taxation in California were lost. One dealt with mortgage taxation, the other with the question of the separation of the sources of State and local revenue. The first aimed to repeal an old and obsolete provision that is admitted to be a failure by economists and students of the question and so unjust in practice that even the courts have permitted its evasion; the second to institute a plan of taxation new and untried in California. The former aimed to remove from the constitution a provision evaded by all mortgagors and mortgagees and legislated against by statute; the latter to introduce a plan the expediency of which is still doubtful, so doubtful in fact that it should be statutory and not constitutional law. Both were lost. The people would not discard the old mortgage tax law and refused to declare themselves for a separation of the sources of State and local revenue.

Failure to repeal the mortgage tax law was due entirely to the people's aversion to a change in the existing fundamental law. Before 1906 the constitution of California contained two clauses on the subject of mortgage taxation. Section 5 (art. 13) stated that every contract in which the debtor agreed to pay any tax on the money loaned on any mortgage was to be null and void. The people were willing to have this clause repealed and did vote for its repeal in 1906. In 1907 an act was passed permitting the parties to the mortgage contract to enter into an agreement relative to the payment of the taxes. Each might pay for the other without any additions being made to or subtractions being made from the amount of the debt. Section 4 (art. 13) of the constitution still remained, however, and provided that while the tax might be paid by either party to the agreement yet if it was all paid by the owner of the security the tax that was levied on the property was to become a part

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of the debt and if it was all paid by the owner of the property the part that was levied on the security but paid by the mortgagor was to be considered as a part payment of the interest or debt. The legislature endeavored to do away with this conflict between the constitution and the ruling of the supreme court, this conflict between the constitution and the statute, by repealing the constitutional provision. The people objected by a vote of 90,896 to 90,061 and the provision, although inoperative, still remains.

The proposed constitutional amendment relating to the separation of the sources of State and local revenue was rejected by a safe majority, and yet the minority was large enough to lend encouragement to the advocates of the project. The vote stood 87,977 for and 114,104 against. The proposed constitutional provision was very comprehensive but much too detailed for a good constitutional provision. The whole prospective tax system of the State was outlined; revenue from corporations and public utilities were to go to the State; revenues from all other sources to the minor political units and subdivisions; and the details of the law relating to State revenue were filled in even down to the rate. The people in future years would have needed only to change the rate now and then or perhaps add or subtract a few sources of revenue.

Railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing-room car, and other car-loaning, and other car companies operating upon railroads in the State; every company doing express business on any railroad, steamboat, vessel or stage line in the State; telegraph companies, telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies, banks, banking associations, savings and loan societies, and trust companies; and all franchises of every kind and nature were to be entirely and exclusively taxed for State purposes.

All other property, not exempt, was to be subject to assessment and taxation in the manner provided by law for county, city and county, city, town, township and district purposes.

Public service corporations were to pay a tax annually to the State upon their franchises, roadways, road beds, rails, rolling stock, poles, wires, pipes, canals, conduits, rights of way and other property used in the operation of their business in the State. This tax to be a percentage on the gross receipts as follows: On all railroad companies, including street railways, 4 per cent; on all sleeping car, dining car, drawing-room car, palace car companies, refrigerator, oil, stock, fruit and other car-loaning, and other car companies, 3 per cent; on all companies doing

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express business on any railroad, steamboat, vessel or stage line, 2 per cent; on all telegraph and telephone companies, 3½ per cent; on all companies engaged in the transmission or sale of gas or electricity, 4 per cent.

This tax was to be in lieu of all other charges and fees except amounts agreed to be paid or required by law to be paid for any special privilege or franchise granted by a municipality.

Insurance companies were to be taxed 1½ per cent upon the amount of the gross premiums received upon the amount of business done in the State. Return premiums and re-insurance items were to be deducted from the amount of gross premiums received and county or municipal taxes levied on real estate possessed by the company were to be deducted from the total amount of taxes.

Bank shares were to be assessed to the owner or holder in the city or town where the bank was located; each share to be taxed upon a value to be computed by taking the amount paid in together with its pro rata of the accumulated surplus and undivided profits.

All other corporations, excepting educational, religious and charitable, and corporations not organized for pecuniary profit, were to pay an annual tax to the State upon their franchise to be a corporation, if domestic, and upon their right to do business in the State, if foreign. The tax ranged from $10 to $250 as the capital stock varied from $10,000 to $5,000,000 and over.

The proposed amendment for Missouri, although much more general than the one offered in California, was defeated. It was very brief and left much to the discretion of the legislature. The separation of the sources of revenue and the establishment of local option and home rule was to have been effected by the discontinuance of the levy of the general property tax upon the real and personal property of the State and after the discontinuance of the State tax on such property the counties and cities might subject it to taxation for local purposes. The local units were also given power to exempt any class of property within their jurisdiction from taxation either wholly or by a reduction of the rate. Any taxation or exemption from taxation made in any county or city, however, was to be uniform upon the same class of subjects. The actual separation of the sources of revenue was not to be construed as impairing the authority of the general assembly from levying any tax upon the special subjects of taxation other than the general property tax upon real and personal property, and if the general assembly did select any special subject for State taxation it was to be allowed to exempt it from

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any form of local levy. All the proceeds from this State tax might be used for State purposes or might be appropriated to the counties of the State and the city of St. Louis on such basis and in such manner as the legislature might provide.

The intent of the amendment was that it should be general. The general assembly was to be given considerable discretionary power; it might allow the locality to simply tax real and personal property and make up the deficit by a State appropriation or on the other hand it might allow the minor political subdivisions to tax all sources of revenue and let the State derive its revenue from appropriations made by the counties. The exact division of the sources in the first instance would be fixed by what seemed wise and expedient, and changes would be made as experience demanded. All changes could be made without a constitutional amendment except the complete abolition of the idea and system.

Two other amendments were voted on in Missouri; both dealt with taxes for the maintenance of roads and highways. One proposed amendment provided for a State tax of $0.10 on the $100 assessed valuation to be levied and collected on all objects and subjects of taxation. The money derived from this levy was to be set apart and appropriated in the several counties of the State as a permanent fund for public roads and highways. This amendment did not receive the approval of the people.

The other proposed amendment relating to a tax for road purposes stated that in addition to taxes authorized to be levied for county purposes the county court in the several counties of the State not under township organization, and the township board of directors in the several counties under township organization might in their discretion levy and collect a special tax not exceeding $0.25 on each $100 valuation to be used for road and bridge purposes. This amendment was favorably considered.

The proposed amendment in South Dakota took the form of a new set of constitutional provisions much more general than the present law. The legislature was to provide for raising sufficient revenue by an annual tax to defray the ordinary expenses of the State and for the purpose of paying the public debt. Taxes were to be uniform upon the same class of subjects and to be levied and collected for public purposes. Incomes to be classified in respect to receipts and a graduated or progressive tax levied with such exemptions as might be prescribed. The people refused to adopt the plan as proposed, they preferred the old constitutional limitations forbidding the classification of property, forbidding

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the exemption of money and credits or their taxation at a lower rate, forbidding the removal of the limit on the rate of taxation for State purposes and for paying the public debt, forbidding a change in the rule requiring that a uniform rate shall be levied on all real and personal property according to its true value in money.

A similar step was attempted in Washington with similar results. The legislature proposed to insert three simple provisions; the power of taxation was never to be surrendered, suspended, or contracted away, taxes were to be uniform upon the same class of subjects, and levied and collected for public purposes only. The people refused to accept the proposed amendment, preferring to retain the old provisions requiring that all property, not exempt, be taxed in proportion to its value, that a uniform and equal rate of assessment and taxation be applied to all property, and that the legislature should provide by general law for the assessing and levying of taxes on all corporate property by the same methods as are provided for the assessing and levying of taxes on individual property.

Three amendments were offered in Minnesota and all were defeated. The first was but a minor amendment relating to the taxation of church property unless used for religious purposes. The second considered the question of aid in the construction and improvement of highways and bridges and provided for the creation of a fund made up of incomes derived from investment in the internal improvement land fund, and the proceeds from an annual tax levied on the property of the State. The third stated that if the land owners wished they might list their land with the county auditors and thus become liable to a specific tax to provide a fund for the payment of damages done to growing crops by wind and hail. No payment of damages was to be made except from the fund provided in this manner.

In Montana an attempt was made to change the rate of taxation on real and personal property for State purposes, so that whenever the taxable property amounted to five hundred million dollars the rate was not to exceed two and one-half mills and whenever it amounted to eight hundred million dollars the rate was not to exceed two mills; no attempt was made to change the present rate limit of three mills on the assessed value of the property. The people expressed their preference for the constitution.

In Utah a similar amendment was offered and defeated by less than two hundred votes. Under the proposed amendment the rate of taxation on property for State purposes was never to exceed eight mills on

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each dollar of valuation. The secondary rates making up this total were also limited and fixed. The rate for general State purposes could not exceed four and one-half mills, for district school purposes three mills, and for high school purposes one-half mill on each dollar of valuation and whenever the taxable property of the State amounted to $400,000,000 the rate was not to exceed five mills unless sanctioned by a majority vote of the qualified tax-paying electors.

Two amendments were proposed and voted on in Texas; the one relating to taxation for school purposes was carried, but the one dealing with taxation for road and bridge purposes was lost. The people voted that one-fourth of the revenue derived from the State, occupation and poll taxes should annually be set apart for the benefit of the free public schools, that there should be levied and collected an anual ad valorem State tax not exceeding $0.20 on the $100 valuation for the same purpose, and that in addition the legislature might authorize an additional ad valorem tax to be levied for the maintenance of schools and the erection of buildings if a majority of the qualified tax-paying voters of the district were in favor of such a tax. The rejected amendment provided that a majority of the property tax-paying voters in any county or one or more political subdivisions of a county might vote a tax not to exceed $0.30 on the $100 valuation or might issue bonds not to exceed 20 per cent of the assessed value of the real property in the district for road and bridge purposes.

In Wisconsin both amendments proposed were approved by the people. One provided that the State might appropriate money already in the treasury or to be thereafter raised by taxation for the construction and improvement of highways; the other that taxes might be imposed on incomes, privileges, and occupations and that such taxes might be graduated and progressive with reasonable exemptions.

The Louisiana legislature, sanctioned by a vote of the people, permitted the exemption of mortgages from taxation. Louisiana now belongs in the class with Idaho and Washington. The provision reads as follows: "In addition to the property now exempt by existing laws there shall also be exempt from taxation loans made upon the security of mortgages granted upon real estate situated in this State, as well as the mortgages granted to secure said loans, and the notes, bonds, or other written instruments evidencing the said loans, whether in the hands of the mortgagee or his or their transferees."

After the proposed amendments providing for the separation of the sources of State and local revenue in Missouri and California perhaps the

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next most important proposed amendment was the one in Ohio. For a number of years Ohio has been struggling with her restrictive constitutional provision relating to taxation. It reads in part as follows: "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money." An honorary tax commission advised the repeal of this section and the incorporation of the following: "The general assembly shall have power to establish and maintain an equitable system for raising State and local revenue. It may classify the subjects of taxation so far as their differences justify the same, in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The power of taxation shall never be surrendered, suspended, or contracted away."

The legislature passed the necessary resolutions, the provision was voted on and rejected.

If we consider these amendments, both approved and rejected, by subjects, we find that the provisions for the separation of the sources of State and local revenue were defeated in California and Missouri; that general provisions to take the place of specific were rejected in Ohio, South Dakota and Washington; that the existing constitutional rate was retained in Montana and Utah; that taxes for highways were approved in Missouri and Wisconsin and disapproved in Minnesota, Missouri (ten amendments were voted on in Missouri) and Texas; that the income tax was approved in Wisconsin and rejected in South Dakota or else was voted down with the longer amendment of which it was a part; that provision for taxes to pay damages done by wind and hail was rejected in Minnesota; that the taxation of church property was not approved in Minnesota; that a tax for school purposes was adopted in Texas; and that the mortgage tax law was retained in the constitution of California and the clause providing for the exemption of mortgages was favorably considered in Louisiana.

ROBERT ARGYLL CAMPBELL.

Corporation taxes—Ontario, Canada. In 1908 the legislative assembly of the Province of Ontario, Canada, passed an act to supplement the revenues of the crown. In reality this act is a revision and compilation of acts passed at previous sessions, with slight amendments added. The act deals entirely with taxes levied on capitalistic, insurance, and public

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utility companies including banks, loan and trust companies; life and fire insurance companies; railroads, street railways, telegraph, telephone, gas, electric light, express, and sleeping car companies. The revenue derived from the tax as levied is to go to the province, but these same companies may be subject to further taxes for Dominion and municipal purposes. This fact should be born in mind when the justice of the tax as levied by the province is considered.

BANKS—Banks are to be taxed on their capital stock, the amount depending upon the location of the head office, the capital stock, and the number of branch banks. If the head office is located in Ontario a tax of one-tenth of 1 per cent is levied on the paid-up capital stock up to $2,000,000 and an additional $25 is added for every $100,000 or fraction of that amount in excess of $2,000,000 and not exceeding $6,000,000. Over and above this a tax of $100 is levied on the head office in Ontario and $25 for each additional office, branch or agency in the province. When the head office or principal place of business is located outside of Ontario and the company has no more than five agencies or branch offices within the province, the lieutenant-governor in council may take this into consideration, determine the amount of capital in use in Ontario, and arbitrarily reduce the amount of the tax with this limitation. In no case is the rate to be less than one-tenth of 1 per cent upon one-half of the paid-up capital.

LIFE INSURANCE—The tax on insurance companies depends primarily on the location of the head office. Every life insurance company which transacts business in Ontario is to pay a tax of 1 per cent on the gross premiums received on business transacted in the province. When the company has its head office in some other province or country and an annual income of less than $20,000 from business on policies of persons resident in Ontario and lends its money secured by land within the province, the company is to pay a tax of 1 per cent on the gross premiums received from the policies and one quarter of 1 per cent on the gross annual income from loans on policies, or land, or securities on land in Ontario. In the case of re-insurance the company re-insured is to be exempt from the tax imposed on the premiums paid to the re-insuring company and the re-insuring company is to be liable for the tax as a part of its gross premiums. Where the re-insuring company, however, does not transact business directly in Ontario and has no principal or head office in the province the company re-insured must be liable for the tax and for its payment to the treasurer and must retain enough of the premium to cover the tax imposed.

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FIRE INSURANCE—Other insurance companies, and this would include fire insurance companies, are to pay a tax of two-thirds of 1 per cent on the gross premiums received on business done in Ontario. Mutual fire insurance companies receiving premiums in cash are to calculate the tax on the gross premiums received on business transacted in the province.

LOAN COMPANIES—Every loan company transacting business in Ontario is to pay a tax as follows: (*a*) companies with a fixed or permanent paid-up capital, $0.65 for every $1000 or fraction of that amount of paid-up capital. In no case is the tax to be less than $65. (*b*) companies having terminating or withdrawable capital as well as fixed or permanent capital are to pay the sum of $0.65 on every $1000 of paid-up terminating or withdrawable capital after the first $100,000 in amount. This in addition to the amount payable under clause *a*. (*c*) companies having terminating or withdrawable capital only, the sum of $0.65 on every $1000 or fraction of that amount of paid up terminating or withdrawable capital after the first $100,000.

TRUST COMPANIES—Every trust company transacting business in Ontario is required to pay a tax of $250 on the paid up capital up to $100,000 and $65 on every additional $100,000 or fraction of that amount, and when the gross profits of the company are $25,000 or more per annum an additional sum of $500 must be paid. Income derived from paid-up capital and again invested in the business is not to be reckoned as gross profits.

RAILROADS—The tax on railroads depends on the location of the road the number of tracks, and the length of the line. Every company owning, operating or using a railway must pay a tax of $60 per mile for a single track and $20 per mile for each additional track owned, operated or used in any organized county, and a tax of $40 per mile for a single track and $10 per mile for each additional track in territory without county organization. If the railroad or system in question does not exceed 150 miles in length the company is only required to pay a tax of $15 per mile of single track and $5 per mile for each additional track, and where the railroad or system does not exceed 30 miles in length, the tax is still further reduced and the company is simply required to pay $10 per mile of single track and $5 per mile for each additional track. The measurement of the track in every case is not to include switches, spurs, or sidings.

STREET RAILWAYS—Street railways are also taxed on their mileage. Every company owning, operating, or using a street railway for carrying passengers is to pay a tax for each and every mile of track within the

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city as follows: $20 where the mileage does not exceed 20 miles; $35 where the mileage exceeds 20 miles but does not exceed 30 miles; $45 where the mileage exceeds 30 miles but does not exceed 50 miles; and $60 where the mileage exceeds 50 miles. The mileage is to be computed by the single track (each mile of double being counted as two miles of single), but switches, sidings, tracks into car sheds, Ys, curves and portions of track not generally used for passenger traffic are to be left out of consideration in the estimate.

TELEGRAPH COMPANIES—Every company owning, operating or using a telegraph line for gain within Ontario is to pay a tax of one-tenth of 1 per cent upon the total amount of money invested in the line and works.

TELEPHONE COMPANIES—Every company owning, operating, or using a telephone line for gain in Ontario is to pay a tax of one-eighth of 1 per cent upon the paid-up capital of the company.

GAS AND ELECTRIC COMPANIES—Every gas and electric lighting company operating in any city in the province is to pay a tax of one-tenth of 1 per cent on its paid-up capital. This tax, however, is not levied on plants owned by companies supplying natural gas nor on gas and electric lighting plants owned by the municipality.

EXPRESS COMPANIES—Every express company operating over a railroad in Ontario is to pay a tax of $800 for the first 400 miles or fraction of that number and an additional $125 for every additional 400 miles or fractional part of that distance. This law does not apply to express companies transporting goods in sealed cars between two points both of which are without the province; it is only to apply to companies receiving or delivering goods at stations in Ontario.

SLEEPING AND PARLOR CAR COMPANIES—Every company transacting business in Ontario by leasing or hiring sleeping or parlor cars to railroad companies, or where sleeping or parlor cars are run upon or are used by a railroad company within Ontario, are to pay a tax of one-third of one per cent upon the money invested in cars used within the Province.

To aid in the assessment and levy of this revenue every company on which a tax is imposed must on or before the first day of June in each year deliver such returns as are prescribed by the lieutenant-governor in council and if the treasurer of the province desires further information he may require it to be given under oath within thirty days. When the information is not furnished as the law provides, or when the company refuses all of the desired information when special request is made, the lieutenant-governor in council may have an inquiry made by a commissioner or commissioners appointed under the public inquiries act.

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Their findings are not to be varied so as to increase the amount of the tax payable by the company without giving it an opportunity to be heard.

Each year, after deducting $30,000, there is to be set apart from the consolidated revenue fund a sum equal to one-half of the amount received in taxes by the province from the railroads. This sum is to be credited to the cities, towns, incorporated villages and organized townships in Ontario in proportion to their population as compared with the whole population of the province as shown by the last preceding Dominion census.

ROBERT ARGYLL CAMPBELL.

Minimum Wage Act—New South Wales. The minimum wage act of New South Wales came into force January 1, 1909. The act applies to factories, warehouses, shops, bakehouses, laundries, and dye-works.

Provision is made that "no workman or shop-assistant shall be employed unless in the receipt of a weekly wage of at least four shillings, irrespective of any amount earned as overtime." Overtime for a workman means more than 48 hours of work in any week, or work after six o'clock in the evening on any working day. Overtime for a shop assistant means more than a half-hour's work after the closing time of the shop in terms of the early-closing acts. The minimum pay for overtime for boys under sixteen or for women is placed at not less than threepence for every hour or portion of an hour; but employers may secure exemption from this requirement, as regards boys under sixteen, where the exigencies of any trade or any employment warrant such exemption. An employer must also pay any boy under sixteen or any woman whom he requires to work overtime on any day not less than sixpence as tea money.

As a further protection against the sweating trades, the law prohibits the payment of any "consideration, premium, or bonus" to any person "for the engaging or employing by him of any female in preparing, working at, dealing with, or manufacturing articles of clothing or wearing apparel for trade or sale."

The act does not apply where all the persons employed as workmen or shop assistants, are members of the employer's family, related in the first or second degree by blood or first degree by marriage.

Definite provision is made for the enforcement of the law. Employers are required to keep records in prescribed form, the duties and powers of factory inspectors are boadened, specific penalties are prescribed for the

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several classes of violations, and the duties of magistrates with reference to the enforcement of the act are clearly defined.

Workmen's Pensions—France. After nearly two years' consideration a committee of the French senate has decided that the workmen's pensions bill passed by the chamber of deputies was impracticable and has proposed a new bill which provides for a pension fund to be maintained by contributions from employers and from the state. Under the proposed system employers would be required to pay 9 francs annually for every employee over 18 years of age and 4½ francs for every employee under 18. Members of the working class would be entitled to a pension amounting to 120 francs upon reaching the age of 65.

The bill also makes provision for an old age pension system to be maintained by monthly payments on the part of the interested parties. The payments required amount to 3 francs annually for persons between 15 and 18 years of age and 6 francs annually for those above 18.

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NEWS AND NOTES

Notes on Current Municipal Affairs

WILLIAM BENNETT MUNRO

The National Municipal League has just issued its annual Proceedings, embodying in a neat volume of nearly five hundred pages the various papers which were presented at its fourteenth annual convention, held at Pittsburgh, Pa., in November last. The volume contains a series of interesting and important contributions covering a considerable list of topics, and including such subjects as Municipal Research, Charter Reform, the Civic Conditions of Industrial Communities (especially in connection with the Pittsburgh survey), the Relation of the City to the Liquor Problem, the Control of Public Utilities by commissions and otherwise; and Municipal Health and Sanitation. Among the more noteworthy papers mention may be made of Hon. Clinton Rogers Woodruff's comprehensive discussion of American Municipal Tendencies; the paper on Charter Tendencies in Recent Years by Prof. John A. Fairlie of the University of Michigan; Prof. A. R. Hatton's thorough analysis of The Liquor Traffic and City Government; and the short discussion of Permanent Officials in Municipal Government by A. Lawrence Lowell, president-elect of Harvard University. The address of the League's president, Hon. Charles J. Bonaparte, dealt with the subject of The Criminal Law as a Means to Give Effect to the People's Will.

A novel and profitable feature of the League's sessions was the presentation of reports upon the so-called Pittsburgh survey. This survey involved a close range investigation of the conditions of life and labor in Pittsburgh as a typical industrial city, with special reference to the relation between local economic and political conditions. The work was conducted by some of the best-equipped and most experienced social workers of the United States, among them Messrs. Robert A. Woods, Paul U. Kellogg, Prof. J. R. Commons, and Mrs. Florence Kelley. The full results of the investigation will be published by the Russell Sage foundation as one of its series of educational publications and will form, on a smaller scale, a work somewhat analogous to Mr. Charles Booth's monumental *Life and Labor of the People of London.*

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The Boston finance commission, after nearly two years of patient investigation, has recently completed and presented its report. This commission of eight members was appointed in the month of July, 1907, by the mayor of Boston, the commissioners having been nominated to the mayor, at his request, by various mercantile, labor, and other representative organizations of the city such as the Boston Merchants' Association, the Chamber of Commerce, the Boston Central Labor Union, and so on. In the course of its work the commission conducted an investigation into the affairs of practically every city department, and issued from time to time no fewer than 127 special reports upon as many different matters. In addition to these, the engineers and experts whom the commission employed made 77 special reports. The investigations were very thorough, for the commission was given by the legislature authority to summon witnesses, to compel the production of books and papers, and in fact to exercise in matters relating to the obtaining of information, all the usual powers of a higher court. The members of the commission served without remuneration, and in some cases at great personal sacrifice, but the sum of $85,000 was placed at their disposal to cover all other services connected with the commission's work.

The various reports are to be printed in five volumes, of which only the first has as yet appeared. They do not disclose any wholesale wrongdoing such as has been shown to have marked the administration of San Francisco, but the commissioners found that almost every one of the many Boston departments had been conducted in a needlessly extravagant and wasteful manner, that inefficiency was tolerated in order that political ends might be served, and that corruption and even dishonesty showed themselves here and there all along the line. The summary in which the commission set forth the general results of its investigation was written chiefly by Hon. Nathan Matthews, an ex-mayor, and it makes extremely interesting and profitable reading, for it shows the way in which the affairs of a large city may become demoralized even though the outward forms of honesty and efficiency may be maintained.

With its report the commission submitted to the Massachusetts legislature its recommendations for various important changes in Boston's charter. In brief it recommended that the mayor's term should be increased from two to four years, but that at the expiration of two years a mayor should be subject to recall if at the State elections (which precede the municipal elections by about a month), a majority of the registered vote should be polled against him. It suggested that the mayor's powers should be considerably increased and that all appointments

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should be made by him without the necessity of aldermanic confirmation. It further proposed that the common council, a body of 75 members hitherto elected by the 25 wards of the city, should be abolished, and that the city should henceforth have a single council of nine members elected at large for a three-year term, and one-third of the number retiring annually. An interesting recommendation is that which proposes that primary elections be abolished, and that all nominations be henceforth made by nomination paper, such papers to contain at least 2500 names. The report recommended, furthermore, that no party designations be placed upon the ballots used at municipal elections. To the end that full publicity of all future municipal proceedings should be ensured the report recommended the establishment of a permanent finance commission of five persons appointed by the governor of the State, this commission to have solely the power to investigate "any and all matters relating to appropriations, loans, expenditures and methods of administration . . . and to report thereon to the mayor, the city council, the governor or the legislature."

The finance commission's recommendations have aroused much interest and provoked much discussion in and about Boston and are at present engaging the attention of the State legislature. It is not unlikely that the proposed charter amendments will be submitted to the voters of the city at or before the next regular elections.

Students of municipal sociology will be interested in the recently published *Report of the Royal Commission on the Administration of the Poor Law* which embodies the results of an elaborate enquiry which has been conducted during the last three or four years into the administration of public charity in England. The most striking recommendation contained in the *Report* is that which urges the entire reorganization of the machinery of administration in this field including the abolition of the "poor law union" as the local area for charity administration, the elimination of the boards of guardians who have had charge of these unions, and the giving of entire charge to the regular local authorities. This would involve, in the cities, the entrusting of poor relief to the city council to be handled by a new standing committee of this body. In this respect the recommendations of the royal commission follow the general lines laid down in the education act of 1902, which transferred to the city councils to be exercised through one of their committees, that supervision of elementary education which had hitherto been vested in the hands of an independent school board elected directly by the voters in

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each municipality. If the recommendations of the royal commission should be adopted by parliament the municipal councils in England will constitute practically the sole local authorities in the cities with respect to every branch of administration except the granting of licenses. In England the trend of the last half century has been steadily in the direction of entrusting more authority to the city councils, a development which stands in sharp contrast to the general movement in the United States.

The New York charter commission, appointed by Governor Hughes in April, 1908, has recently made its report and has submitted to the State legislature a bill for a new charter. The commissioners recommend a number of important changes in the present framework of New York government and in the distribution of municipal functions, but among these proposed changes two or three may be singled out for special emphasis. Briefly stated the commission urges the abolition of the present board of aldermen and the establishment of a relatively small unpaid council of thirty-nine members to take its place. This council, the commission recommends, should have a large ordinance-making power; but it is to have little to do with the actual administration of the various municipal departments, or with the apportionments of funds, or with the granting of franchises. It is proposed to give it, however, the right to veto specific appropriations made in the budget submitted to it by the board of estimate and apportionment.

The board of estimate and apportionment which during the past half dozen years or more has been an outstanding feature of municipal administration in the metropolis, is retained in substantially its present form; but it is to become, in the language of the commissioners' report, "the great financial executive committee" of the city, and will share with the mayor almost complete control over the whole range of actual departmental administration. The board is to have, according to the commission's proposals, control over seven central bureaus, and every municipal department will come within the jurisdiction of one or other of these bureaus. It is proposed, furthermore, that the powers not exercised individually by the five borough presidents shall be taken away from them and shall be vested in the hands of a street commissioner appointed by the mayor.

Under the present New York charter the powers of the mayor are very extensive, more extensive indeed than are those of the chief executive in any of the world's great cities; but if the suggestions of the present

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commission find acceptance, these mayoral powers will be still further increased. It is recommended that the mayor be given power to appoint without the concurrence of any body, practically every departmental head, and the members of practically every board or commission, and that he be given authority to remove these officials at will. As regards all matters relating to the expenditure of money it is proposed to give him a veto power which would be virtually absolute.

One recommendation of the charter commission will be particularly acceptable to students of municipal affairs. The present New York charter fills a bulky volume of over half a million words, and its complexities defy even the experienced. The charter commission recommends that the charter itself shall be reduced to about 75,000 words by eliminating obsolete sections and by a general simplification. This would bring the document within reasonable compass. It proposes moreover that the administrative regulations of the city shall be incorporated, not with the charter, but in a separate administrative code.

The *Municipal Program*, published some years ago by the National Municipal League but for some time out of print, has been republished as an appendix to Mr. Horace E. Deming's *Government of American Cities* recently issued by Putnams.

The legislature of the province of Quebec has appointed a royal commission to investigate and report upon the financial affairs of the city of Montreal. The conduct of municipal government in the Canadian metropolis has been for some years unsatisfactory to a considerable body of the citizens.

Hon. D. C. Richardson, mayor of Richmond, Va., in his annual message to the city council on March 1, declared very strongly in favor of radical changes in the charter of that city. The mayor expressed himself as personally in favor of the system of government by commission, but the constitution of Virginia requires the maintenance of a bicameral municipal council in every city of the State.

In his recent message to the New York legislature Governor Hughes made this suggestion concerning municipal charters: "There should be a careful study of the problem of city charters in order to develop a plan under which local responsibility may be fixed for the details of administration within the limits of a general scheme of government provided

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by the legislature. Elaborate charter provisions are the prolific cause of special legislation and defeat their own purpose, for, apart from exceptional emergencies, communities must look for their salvation not to the State government but to the public spirit and active interest of their citizens. Meanwhile, and until improved charters are provided, I recommend that care be taken in amending existing charters, so that wherever practicable the amendments should be made in such a manner as to make further special legislation unnecessary."

The system of city government by commission has been adopted in two Massachusetts cities, Haverhill and Gloucester, during the last few months.

The advisory commission appointed by the military government of Cuba some time ago has presented to the Cuban legislature its project for a municipal code. An increased measure of local autonomy is one of the chief recommendations.

The city of Berkeley, Cal., has recently adopted a new charter which provides for the most advanced type of the small-commission form of government, but with a reservation of great power of popular control. The charter illustrates in a very striking manner the contemporary trend of American municipal development.

Hon. Thomas M. Babson, corporation counsel, has compiled a volume entitled *Statutes Relating to the City of Boston*, which includes a reprint of all the legislative enactments now applying to that city. The volume may be said to embody the nearest approach which Bostonians have to an edition of their city charter. It may be obtained at the nominal price of one dollar upon application to the city messenger.

A useful select bibliography of books relating to municipal government has been issued by the public library of Kansas City, Mo.

A new edition of Dillon's *Law of Municipal Corporations*, a work which has been invaluable to students of municipal administration, is now being prepared and will be published shortly.

The *Schriften des Vereins für Socialpolitik* will include in its issues during the next few years a series of monographs on the actual administrative activities of German cities.

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This year's edition of the *Municipal Year Book of the United Kingdom* (ed. Robert Donald) has been considerably extended in scope, and the price has been doubled in consequence.

A committee of the National Municipal League has under consideration the project of establishing, under the League's auspices, a quarterly publication of somewhat similar scope to the periodical known as *Municipal Affairs*, which suspended publication seven or eight years ago.

At the general city election in St. Louis in April, a board of thirteen freeholders will be elected to prepare a new charter for the city. A bi-partisan board has been nominated jointly by the republican and democratic conventions, each convention having named six members and the twelve thus selected having chosen the thirteenth member. The State constitution requires that the charter shall provide "for a chief executive and at least one house of legislation to be elected by a general ticket." Otherwise the board will be subject to no special limitation in proposing changes in the organization of government. The charter prepared by the board must be submitted to the voters, a majority of those voting being sufficient for ratification. The present charter was adopted in 1878.

Following the example of St. Joseph and Kansas City, the municipal assembly of St. Louis has finally—under the "enabling act" passed by the State legislature in 1907—created a public utilities commission. The St. Louis commission is composed of three members appointed by the mayor with the confirmation of the upper house of the assembly. It has general powers of investigation over the public utility corporations in the city and may recommend rates to be fixed by the assembly. Governor Hadley has recommended to the legislature the establishment of a State utilities commission, similar in tenure and functions to the New York commissions. This commission would have power over all public service corporations of the State and would supplant the present city commissions. The majority of the upper house of the legislature being democratic, it is probable that they will defeat any bill vesting such powers in a commission appointed by a republican governor.

The legislature of Missouri, now in session, will probably give "home-rule" over the police departments to St. Louis and Kansas City. At present in each of these cities the police are under the control of a board

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of police commissioners appointed and removable by the governor; the mayor is ex-officio member of the board. Several bills have been introduced to replace these boards by locally selected officials. The bill which stands the most likelihood of becoming law, and which has passed the lower house, provides for a single police commissioner in each city, to be appointed by the mayor, though subject to removal by the governor—as well as by the mayor—"wherever the public interest requires." The powers vested in the commissioner over the administration and discipline of the police department are similar to those exercised by the police commissioner of New York City. A bill providing for a like tenure of the excise commissioner in St. Louis has also passed the lower house; this officer is at present appointed and removable by the governor.

Harvard University has recently received from Mr. F. G. Thomson of Philadelphia a guarantee of the sum of $5000 a year for ten years, the gift to be used for the extension of instruction in municipal government.

Present Status of Ballot Laws in the United States

ARTHUR LUDINGTON

It is just twenty years this winter since the adoption of the first "Australian ballot" laws in the United States.[1] A summary of the various ballot laws now in force in the several States is, therefore, of particular interest at this time, as showing the extension of the Australian system in this country at the close of its second decade.

At present,[2] out of the forty-six States and two territories in the United States proper, thirty-nine States and the territory of Arizona have adopted an official "blanket"[3] ballot, printed at public expense, for virtually all elections (not including within that term primary

[1] The law of Mass. was passed in 1888, but did not go into effect until November 1, 1889. No other Australian ballot laws were passed before 1889.

[2] The following statistics in regard to the ballot laws of the several States apply to these laws as they were in force at the date of the last general election, November 3, 1908.

[3] By a "blanket" ballot is meant one on which are grouped, according to any one of several methods of arrangement, the names of *all* candidates for any office or group of offices covered by the ballot in question, who have been duly nominated by any political party or body of voters.

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elections).[4] Such ballots are distributed to the voters only at the polling place, and by the election officers. It is usually expressly provided that no other ballots shall be received by the election officers, or counted, in any election to which the general ballot law applies; but in case the official ballots for any polling place are lost, or for any reason are not on hand, it is often provided that other official ballots may be prepared, as much like the official ballots as possible, and used in their stead. Tennessee has adopted a ballot law of this type for all elections in counties of over 50,000, and towns of over 2500 inhabitants, and in certain other counties to which this law has been applied by special acts—a total of 224 out of 1567 election districts, and these the most densely populated. In all other districts the ballots are unofficial, and separate for each party, the law merely establishing certain requirements as to size and form.

Of the remaining States, Missouri and New Jersey—as well as the territory of New Mexico—have laws which provide that all ballots shall be official and printed at public expense, but that separate ballots shall be printed for each party, containing in each case only the names of the candidates nominated by that one party. In Missouri these ballots are distributed to the voters only at the polling place and by the election officers. Each voter receives, on entering, one ballot of each party, takes these ballots to the voting booth, marks whichever one he selects, folds them all so that only the outside—which is the same on all ballots—is visible, and returns them to the election officer. The ballot which he has voted is then placed in the ballot-box, and the unvoted ballots are deposited in a separate box.[5] In New Jersey, on the other hand, the official ballots may be, and usually are, distributed to the several party organizations and to individual voters, at least seven days before the election, by the officers charged with the duty of printing them, on pay-

[4] Elections for school officers, road overseers, officers of fire departments, etc. and sometimes elections of town officers, are usually exempted from the provisions of the general ballot law of the State. In some cases this exemption only applies when such elections are held at a different time from national, State, district, county or municipal elections. In a number of States there are separate ballots, of the type prescribed by the general ballot law, for local and municipal elections, and often for constitutional amendments and other questions submitted to popular vote. The State constitutions, however, almost all contain a provision that all elections by the people shall be by ballot—i.e., of one sort or another.

[5] Prior to 1897 Missouri had a "blanket" ballot, but in that year the law was amended to provide for separate official ballots for each party. Most of the other features of the old Australian ballot law were, however, retained.

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ment by such party organizations or individual voters of the cost of printing. It is the party organizations that usually take advantage of this provision, and they are furthermore allowed to alter the ballots so secured by erasing the names of any of the candidates, or by the use of pasters of a certain prescribed form. They then distribute these ballots to the voters before the election, and the latter prepare them, take them with them to the polling place, and deliver them (just as in the old days before the Australian ballot system had ever been adopted in this country), seldom making use of the ballots offered to them by the election officers. The one redeeming feature of this system is the use of official envelopes which can only be procured at the polling place, from the election officers. Every ballot cast must be enclosed in such an envelope. Even with this provision, however, a commission, appointed by the State senate in 1907 to investigate the use of paper ballots and voting machines in the State, reported to the legislature in 1908 that the ballot now used was, "with perhaps a single exception, the most unsafe, the farthest removed from a secret ballot, and the most easily manipulated in the interests of fraudulent voting of any paper ballot in use in any northern State."

In New Mexico, likewise, the law allows the distribution of the official ballots to the voters by the several party organizations prior to the day of election.

The other four States, besides Missouri, New Jersey, and the territory of New Mexico, which have not yet adopted an official blanket ballot, are Connecticut, the two Carolinas and Georgia. The first of these, Connecticut, occupies a position—so far as its form of ballot is concerned —midway between Missouri, New Jersey and New Mexico on the one hand, and the Carolinas and Georgia on the other. Properly speaking, it has no official ballots, since each party prints its own, and distributes them to the voters. The secretary of state, however, prepares blank forms of the proper size and shape, and has printed on the back of each the words "official ballot;" and, in addition to this, when furnishing these blank forms to the several parties, he prescribes the size and style of the type to be used in printing the face of the ballot, certain other rules as to form and arrangement being prescribed in the law itself. The party organizations pay the cost of preparing the blank forms thus obtained. The names of the candidates of any party for national and State offices must be printed on one ballot, the names of its candidates for local offices on another, proposed constitutional amendments on a third, and questions in regard to education on a fourth; and all these bal-

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lots, or as many of them as the voter chooses to cast, must be placed by him, while in the voting booth, in an official envelope (similar to those used in New Jersey) obtainable only at the polling place and from the election officers.[6] Unlike the New Jersey system, the envelope must be sealed before being returned to the election officers and deposited. It will be seen that—apart from the fact that in New Jersey the printing of the whole ballot is done under government direction, whereas in Connecticut the face of the ballot is printed under the direction of the several parties, according to rules laid down by the government—the two systems are essentially alike. Under the latter it is provided, under the former merely permitted, that the ballots be placed in the hands of the several party organizations for distribution to the voters prior to election day. The New Jersey system seems slightly more in accord with the spirit of the true Australian ballot, but the freedom accorded the several parties to alter the official ballot, by pasters and otherwise, goes far to nullify in practice this formal advantage.

The ballot laws of North Carolina, South Carolina and Georgia are one stage farther removed from the Australian system, and may fairly be described as rudimentary. They are essentially a survival from, and represent, the period prior to 1889,—though even at that time many States had ballot laws of a more advanced type. In the two Carolinas the entire preparation and distribution of ballots is left to the voters—in practice, that is, to the party organizations. Their size, form and color are prescribed rather carefully, so that all ballots may be exactly alike on the outside:—In North Carolina the State and county boards of elections are authorized to prescribe rules governing these matters once every two years. The ballots in each State may be printed, or written, or partly printed and partly written; and must contain no ornament, device, symbol or mark of any sort except the names of the offices to be voted for, and the names of the candidates. In South Carolina there are eight separate ballots for various sets of offices, and another ballot for questions submitted to popular vote; and for each sort of ballot there is a separate ballot-box. In North Carolina there are five separate ballots provided for, each with its own ballot-box. Of the two, the law of South Carolina is somewhat the more advanced.

The law of Georgia stands in a class by itself in its almost complete lack of any provisions regulating the form of ballot. A paragraph in the constitution (art. 2, sec. 1, par. 1) providing that "in all elections by the

[6] This feature, of the official envelope, is found only in the laws of these two States.

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people the electors shall vote by ballot," a section of the code to the same effect, and another subdivision of the same section (code of 1895, title 2, chap. 3, art. 3, sec. 72) to the effect that "as each ballot is received, the number of the voter on the list shall be marked on his ballot before being deposited in the box" (sic!), seem to constitute, between them, the whole law of the State upon this subject.

It is to be noted that, under the laws of Georgia, the two Carolinas and, apparently, New Mexico, the voter prepares his ballot completely before coming to the polling place, and, on arriving there, merely "deposits" it without retiring to a voting booth or any place screened off from public view—indeed "voting booths" are not even mentioned. In Connecticut and New Jersey the voter usually brings his ballot with him already prepared, but in order to place it in the official envelope he must retire for a moment to a voting-booth or room provided for this purpose, and, in so doing, escape from the sight of anyone who may have been watching him. Where this is not provided for, it is obviously possible, for any one who may be interested, to observe whether a ballot given to the voter outside the polling place is deposited by him or not.

To return to the forty States (including Tennessee) and one territory which have provided for an official "blanket" ballot—the laws of these States may be grouped most readily (1) according to the system of arranging the names of the candidates on the ballot, and (2) according to the presence or absence of any special provision for voting a straight ticket.

Twenty-seven States[7] and the territory of Arizona have the so-called "party column" form of ballot; that is, one on which the names of all the candidates of each party are grouped in a vertical column under the party name or emblem, the several party columns being parallel and arranged in order from left to right, usually according to the size of the vote cast by each party at the last election, or to some other prescribed rule. The names of the several candidates for each office are arranged as nearly as possible in a horizontal line across the ballot, each one in its proper column, under the title of the office. Commonly both name and emblem are placed at the top of each column, but in twelve states,[8] no emblems are used.

[7] Ala., Calif., Del., Idaho, Ill., Ind., Ia., Kan., Ky., La., Me., Mich., Mon., N. Hamp., N. Y., N. Dak., O., Okl., R. I., S. Dak., Tex., Utah, Vt., Wash., W. Va., Wis., and Wy.

[8] Calif., Ill., Ia., Me., Mont., N. Dak., S. Dak., Tex., Vt., Wash., Wis., and Wy.

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The other thirteen of the "blanket ballot" States[9] use what is generally known as the "Massachusetts ballot"—Massachusetts having been the first State to adopt this form, and having retained it, with only minor changes, ever since. Under this system the names of all the candidates for each office, followed usually by the names of the parties which they represent, are grouped together in a short, vertical column under the title of the office, the several groups being placed one below another on a long, narrow ballot, or, where the number of offices to be voted for is very great, in two or more parallel columns.[10] In six out of the thirteen States the law provides that the names of the candidates shall be arranged under the title of each office in alphabetical order, according to the surnames.[11] In three States the arrangement of the names of the party candidates under each office is according to the vote cast by the several parties at the last preceding election, the name of the candidate of the party which cast the largest vote being placed at the top, the name of the candidate of the party which cast the next largest vote, second, and so on.[12] In the other four States no particular method of arrangement is prescribed.[13]

The names of candidates for presidential electors of each party are usually grouped together, and with each such group the names of the candidates of the same parties for president and vice-president are usually printed. In six out of the thirteen States it is provided that a single cross

[9] Ark., Col., Fla., Md., Mass., Miss., Minn., Neb., Nev., Ore., Penn., Tenn. (for the portions of the State above-mentioned), and Va.

[10] Several States always employ this latter form.

[11] Col., Md., (Laws 1908, ch. 737, prescribes this arrangement for the city of Baltimore and twelve counties, but fixes no special arrangement of the names under each office for the other eleven counties), Mass., Nev., Ore., and Tenn.

[12] Minn., Neb., and Penn., La., Minn., however, it is provided that "whenever two or more persons are to be elected to the same office (except the office of presidential elector), the names of all candidates of the several political parties for such office shall be so alternated on the ballots used in each election district that they shall appear thereon substantially an equal number of times at the top, at the bottom, and in each intermediate place, if any, of the list or group in which they belong." (L. 1901, ch. 88 S. 3.)

[13] In Arkansas no particular arrangement of names under each office is provided for. In Florida it is merely provided that "the names of all candidates for the same office shall be printed together, irrespective of party." In Mississippi the arrangement of the names is left to the discretion of the officer charged with printing the ballots, but the secretary of state, with the approval of the governor, is to prescribe a form which is to be followed, in general, as nearly as possible in all parts of the State. In Virginia the names are to be arranged under the title of each office, "in due and orderly succession."

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(×) mark opposite the name of the candidate for president and vice-president shall be counted as a vote for each of the electors of the same party.[14]

It is often specifically provided, with the "Massachusetts" form of ballot, that the name of any candidate shall appear on the ballot but once, followed by the designation of the party or principle which he represents. In six States[15] it is further provided that, if a candidate is nominated for the same office by more than one party or group of voters, the name of each such party or group shall be printed after his name. In Minnesota, however, the law provides that no person "shall be named on the official ballot as the candidate of more than one party, or of any party other than that whose certificate of his nomination was first properly filed." In Florida, Mississippi, Tennessee and Virginia, and in certain counties in Maryland, no party designations of any sort are previded for.

It may be said, in general, that the varieties of "Massachusetts ballot" in use in the southern States are much less thoroughly developed—represent a more rudimentary type—than those, for example, of Massachusetts, Minnesota and Oregon. Probably this is due to the fact that of late years interest in these States has naturally been centered far more on the primary, than on the general, election.

In conjunction with the "Massachusetts ballot," and with the proviso that the candidate's name be followed by the names of all parties or groups which have duly nominated him for the same office, the rule that the name of any candidate shall appear in but one place on the ballot is eminently fair. When, however, as is the case in fourteen States[16] this same rule is adopted in conjunction with a "party column" ballot, the combination is in many ways objectionable.[17] Its result is greatly to

[14] Md., Mass., Minn., Neb., Penn., and Va. In the last-named State the voter is to scratch out the names of the candidates for president and vice-president of all parties which he does *not* want to vote for, and this counts as a vote for all electors of that party the candidates of which for president and vice-president he leaves unscratched.

A similar provision, that a whole list of presidential electors may be voted for by a single cross × mark, is found in the laws of the following States which have the "party column" form of ballot: N. Hamp., N. Dak., R. I., and Wis.

[15] Col., Md. (in the city of Baltimore and twelve counties; in the other eleven counties no party designations appear upon the ballot), Mass., Neb., Ore., and Penn.

[16] Idaho, Ind., Ia., Kan., Ky., Mich., Mont., N. Dak., S. Dak., Tex., Vt., Wash., Wis., and Wy.

[17] This applies also to the Minnesota provision, above-mentioned, that the name of a candidate shall be followed by the name of not more than one party.

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hamper "fusion" movements, and the non-partisan election of judges, by preventing the endorsement, by one party or independent group, of candidates nominated by another, and the printing of such candidates' names in two or more columns on the ballot. In Ohio a law containing this provision was repealed, by the strenuous efforts of municipal reform associations, in 1908; but at present there is danger of its repassage. In New York a bill which attempted to introduce it in the case of all except judicial candidates passed both houses of the legislature in 1908, but was vetoed by Governor Hughes. In his veto message the Governor said: "This measure is wholly indefensible. Undoubtedly one of the criticisms of the present form of ballot is that candidates' names frequently appear in several columns, but the remedy is to change the form of ballot and to abolish the party column. In other words, we should have a simplified ballot in which the names of the candidates for the respective offices should appear but once, grouped under the names of the offices. But as long as we retain the present form of ballot with its party columns, it would be a grave injustice to prohibit a candidate's name from appearing in more than one column."

In Montana this provision was first introduced into the present law in 1907, and it is said to be popular. It is also said in other States that such a rule prevents secret deals by party "bosses" to secure for their candidates the endorsement of minor parties, especially for the less important places on local tickets. The answer to this seems to be that of Governor Hughes—that the proper remedy for such evils is the adoption of the "Massachusetts" form of ballot.

One of the most important features, according to the presence or absence of which the several forms of ballot may be grouped, is a special provision of any sort for a "straight ticket" vote. Since the chief object of the "party column" ballot is to facilitate the voting of a "straight ticket," while that of the "Massachusetts" ballot is to make the voters stop and think about each office in turn, it is natural that most of the States which have the former type of ballot provide specifically for "straight ticket" voting and that most of those which have the latter do not. Among the "party column" States, however, two—Iowa and Montana—have no such provision, and for this reason their form of ballot is, perhaps, in practice, nearer to the "Massachusetts," than to the regular "party-column" type. A bill providing for such a half-way step toward the "Massachusetts ballot" has been several times introduced in New York State. Among the "Massachusetts ballot" States, on the other hand, three out of the thirteen—Colorado, Nebraska and

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Pennsylvania—provide a special method of voting a "straight ticket"—Nebraska and Pennsylvania by a row of party circles or squares, and Colorado by the following formula, printed across the top of the ballot: "I hereby vote a straight . . . ticket, except where I have marked opposite the name of some other candidate," preceded by the instruction: "To vote a straight party ticket, write within the blank space immediately hereunder the name of the party you wish to vote for." So utterly alien are these provisions to the true purpose of the "Massachusetts ballot" that the States whose laws contain them cannot properly be placed in the same class with the other ten "Massachusetts ballot" States, but must be considered as having a hybrid form of ballot which, in practice, is nearer that of the "party-column" States.

In considering these two most common forms of ballot, it is interesting to trace briefly their relative gains and losses since 1889. The first laws establishing an official "blanket" ballot in this country commonly provided for the true "Australian" form, although a number of States adopted the "party column" modification from the start. As the system spread, however, this latter form became the more popular, chiefly because it was less objectionable to the party organizations. Moreover, six States which had originally adopted the "Massachusetts ballot" changed over before 1905 to the "party-column" form.[18] On the other hand, at least four States which started with the "party column" ballot —or which at one time adopted this form—have changed over to the "Massachusetts ballot."[19] There is, furthermore, in a number of States at the present time a strong movement for the adoption of the "Massachusetts ballot" in place of the "party column" form. In New York State Governor Hughes has advocated this change for several years, and the sentiment in favor of it is steadily increasing. In Ohio the "Massachusetts" form was adopted in 1908 for ballots used in the election of

[18] N. Hamp., in 1897, La., in 1898, Calif. in 1899, Mont., in 1901, Ala., in 1903, and R. I., in 1905

[19] Col., in 1894, Neb., in 1899, Md., in 1901, and Penn., in 1903. Neb., first adopted the "Massachusetts ballot" in 1891; in 1897 it substituted the "party column" form; and in 1899 it changed back again. Penn. adopted in 1891 a combination of two forms—"party column" for candidates of parties which had polled at least 3 per cent of the vote at the last election, and "Massachusetts" for all other candidates. In 1893 it changed to a straight "party column" ballot, and in 1903 to the "Massachusetts" form. It is only fair to note, however, that Col., Neb., and Penn., all retain, in conjunction with the "Massachusetts Ballot," a special provision for voting a "straight ticket," and that in Md., the value of this form of ballot is very much reduced by the various tricks and devices which have been added to it, in certain parts of the State where there is a large negro vote.

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members of boards of education, and there is a strong demand for its extension to municipal elections. In Kansas a "Massachusetts ballot" bill passed the lower house this year, and next year the Republican party will probably be pledged to its enactment. In New Jersey the ballot law commission above mentioned introduced a bill codifying the whole election law of the State, and adopting the "Massachusetts" form of ballot. This bill failed to pass, and this winter another bill was introduced, providing for a blanket, "party-column" ballot, with the "Massachusetts" form of ballot as an alternative. This bill was also defeated, but the question will continue to be agitated.

The outside of the ballot in practically all the "blanket ballot" States contains the words "official ballot," and usually, in addition to this, the designation of the polling place at which the ballot is to be used, and the date of the election. Often a facsimile of the signature of the officer charged with printing the ballots is provided for. The ballot must always be so folded that these markings are left visible. This requirement is to prevent the casting of any but official ballots.

In order further to insure that the ballot finally deposited by the voter shall be none other than the one received by him from the election officer, it is sometimes provided that the latter write his initials upon the back of it before handing it to the voter. A better system, and the one most generally in use, is that of numbering all the ballots consecutively, entering the number of each ballot upon the poll-book, opposite the name of the voter to whom it is given, at the moment at which it is handed to him, and comparing this number with that of the ballot returned by him before such ballot is deposited.

Where this latter method is employed, however, it is very important that the numbers be printed or written, *not* on the ballot itself, but upon a detachable stub, which is to be torn off before the ballot is finally deposited in the ballot box, and itself destroyed, or preserved in some other receptacle. Where the numbers are written on the ballots themselves a method is furnished by which the party watchers of the count, or the election officers acting in behalf of corrupt party leaders, can determine afterwards by whom they were cast—the one thing, of course, above all others, which the Australian ballot system is designed to avoid. A proper system of consecutive numbering has the further advantage—where the law is honestly enforced—of preventing ballot-box stuffing, the exact number of ballots lawfully cast being readily ascertainable. The same end is attained—though less satisfactorily—by merely checking off the name of each voter on the poll-book as he deposits his ballot.

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Personal and Bibliographical

J. W. GARNER

Dr. T. H. Aschehoug, professor of political science in the University of Christiania, died on January 20, in the eighty-sixth year of his age.

Dr. O. Gradenwitz, professor of Roman and German civil law in the University of Strassburg, has been called to a similar chair in Heidelberg.

Dr. Gustav Droysen, professor of modern history in the University of Halle, and a son of the late Johann Gustav Droysen, died November 11, in the seventieth year of his age.

Dr. Heinrich Triepel, professor of constitutional and administrative law at Tübingen, has been called to a similar chair in the University of Kiel.

Dr. A. Weber of Bonn has been called to the chair of political science in the commercial high school at Cologne.

Prof. Charles Gross of Harvard University has been elected to the Gurney professorship of political science in that institution. Mr. Gross has been professor of history at Harvard for a number of years and is the author of an extensive list of books and articles, his bibliography of British municipal history (1897) being probably the best known to the readers of this Review.

Prof. William G. Sumner, professor of political and social science in Yale University, will retire from active service at the end of the present academic year. Professor Sumner has occupied his present chair at Yale since 1872. He has written extensively on political, economic and social questions, and is the author of biographies of Andrew Jackson, Robert Morris, and Alexander Hamilton.

Prof. John W. Burgess, dean of the graduate faculty of Columbia University, has been granted a year's leave of absence and will devote the year principally to the study of German university methods with a view to improving the conditions of graduate instruction at Columbia. He has been relieved of nearly all teaching work and his courses will be taken by Professors Goodnow and Beard.

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Prof. Munroe Smith of Columbia University is on leave of absence during the second semester of this academic year and is spending his vacation in France.

Prof. Abbott Lawrence Lowell, author of *The Government of England* and president of the American Political Science Association, was elected president of Harvard University on January 19 last. President Lowell will assume active charge on May 19, the fortieth anniversary of President Eliot's appointment, but the formal inauguration will not take place until February next.

Mr. Payson J. Treat, A.M., a graduate of Wesleyan University (Conn.), has been appointed assistant professor of history and political science in Leland Stanford Jr. University.

Mr. G. A. Sedgwick, of the New York bar, delivered the four E. L. Godkin lectures at Harvard during March on Some Unsettled Questions relating to Popular Government. These lectures will shortly be published in book form.

Prof. G. W. Prothero, editor of the *Quarterly Review*, and formerly professor in the University of Edinburgh is coming to America next year to deliver a course of lectures at Harvard University on The Growth and Government of the British Empire.

Mr. Edward Porritt, author of *The History of the Unreformed House of Commons*, is supplying the place, during the second half of the current year, of Professor MacVane of Harvard University, who is absent in Europe on leave of absence. Rev. Charles Luke Wells, dean of the Cathedral in New Orleans and author of *The Age of Charlemagne* is replacing Prof. Charles Gross of the same institution, who is similarly absent.

The National Municipal League's committee on instruction has printed its report on The Present Status of Instruction in Municipal Government in the Universities and Colleges of the United States. The report contains a list of the institutions in which such instruction is given, with various data relating to the scope and methods of instruction.

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Prof. J. B. Moore has been granted another year's leave of absence on account of his health and Prof. G. W. Scott will continue to give his courses at Columbia.

Governor Charles W. Hughes of New York will deliver the William E. Dodge lectures on The Responsibilities of Citizenship at Yale University this spring.

Mr. A. Lawrence Lowell, president of Harvard University, delivered in April at the Johns Hopkins University a series of four lectures on Public Opinion and Popular Government.

Judge Simeon E. Baldwin has recently retired from the supreme bench of Connecticut, having reached the age limit of seventy years. He was appointed to the Connecticut bench in 1893 and became chief justice in 1896. He has been one of the ablest and most distinguished judges who ever served on the supreme bench of that State. He was president of the American Bar Association in 1890, and has been an active member of the American Political Science Association since its organization. In addition to his judicial duties he has found time to serve as a professor in the Yale Law School, and has been a frequent contributor to many periodicals, both American and foreign.

Prof. Jesse Macy of Iowa College and Prof. James A. Woodburn of Indiana University are lecturing at Stanford University during the second semester of the present academic year.

Among the new books announced by the Macmillan Company are, *British Cities and their Problems*, by Milo R. Maltbie; *The Government of the United States*, by James T. Young; *The Government of Great American Cities*, by Delos F. Wilcox; *The Principles of Taxation*, by Max West; *The People's Law*, by Charles Sumner Lobingier; *The Principles of American Government*, by Charles A. Beard; and *The Roman Assemblies*, by George W. Botsford.

The *Koloniale Rundschau* is a new journal devoted to the interests of the German colonies; it is edited by Ernest Vohsen, and is published at Berlin by D. Westerman.

The *Zeitschrift für Politik* began publication in 1907, and has recently completed its first volume; it is edited by Dr. Richard Schmidt and Dr. B. Grabowski, and is published at Berlin by Carl Heymann. Another

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German periodical publication which has recently been started is the *Jahrbuch der Rechtsprechung zum Verwaltungsrecht*; the first volume of this *Jahrbuch* (Stuttgart, Deutsche Verlags-Anstalt, 1909, pp. xxi, 773), contains decisions rendered by the German courts during 1907 and 1908 upon questions in the fields of constitutional and administrative law.

Les annales de la Régie directe is a new bi-monthly journal edited by Edgard Milhaud, a professor of political economy at the University of Geneva. The journal has been established to advocate socialistic doctrines, and urges, first, the nationalization or municipalization of natural monopolies, and later the management of all industrial enterprises by the government. Professor Milhaud thinks that the development of great capitalistic enterprises is producing artificial monopolies equally as dangerous as natural monopolies, and that the only remedy for such a condition is socialism.

The *Annual Report for 1907 on Reforms and Progress in Korea* (Seoul, December, 1908, pp. viii, 140), contains a detailed statement of the work accomplished by Marquis Hirobumi Ito, the Japanese resident-general in Korea. Of particular interest is the statement of the reasons which made it necessary for the Japanese government to abandon the plan of simply supervising Korean officials, and to undertake what practically amounts to a direct administration of Korean affairs. The resident-general, as the representative of Japan, has become all-powerful in the Korean administration. The work being accomplished by the Japanese in Korea parallels in many ways that done by England in Egypt.

A new edition of Dicey's *Conflict of Laws* has been published by Stevens and Sons (London, 1908). It will be remembered that the first edition of this work contains notes of American cases by Prof. J. B. Moore. The American notes have been omitted from the second edition.

A new edition of Prof. Emory R. Johnson's *American Railway Transportation* has appeared (New York: Appleton, 1908). The new edition contains the latest official statistics available, a discussion of the Hepburn act, and a summary of State legislation bearing upon railway transportation from 1902 to 1908.

An American School Peace League has recently been organized for the purpose of promoting, "through the schools and the educational public of America, the interests of international justice and fraternity." The new organization will hold its first annual meeting at Denver during the month of July, at the same time and place as the annual meeting of the

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National Educational Association. The president of the League is Mr. James H. Van Sickle, superintendent of the schools of Baltimore, Md.

The following pamphlets have been issued by the Association for International Conciliation: *European Sobriety in the Presence of the Balkan Crisis,* by Charles A. Beard; *The Logic of International Coöperation,* by Francis W. Hirst; and *American Ignorance of Oriental Languages,* by J. H. De Forest.

The Wisconsin Legislative Reference Department has recently issued a number of bulletins which will be of interest to students of political science: *Primary Elections: The Test of Party Affiliation,* by Margaret A. Schaffner; *Proportional Representation,* by Roy E. Curtis; *Juvenile Courts,* by Stanley K. Hornbeck; *Telephones: Interchange of Service,* by Laura Scott; *Mortgage Taxation,* by Robert Argyll Campbell; *Municipal Home Rule Charters,* by Margaret A. Schaffner; and *Tenement House Legislation: State and Local,* by Ford H. MacGregor.

A valuable report on documentary historical publications of the United States government has recently been issued from the Government Printing Office. This report was prepared by a committee of nine prominent historical scholars; Mr. Worthington C. Ford was chairman, and Prof. J. Franklin Jameson secretary of the committee. The report discusses methods heretofore pursued by the federal government in the publication of historical materials, and recommends plans for the systematic publication of historical documents. One of the most important suggestions in the report is that for the creation of a permanent commission on national historical publications, to have general direction of governmental activities in this field. Students of political science will be especially interested in the committee's recommendation as to what should be published in the fields of constitutional, political and diplomatic history.

The fifteenth annual meeting of the Lake Mohonk Conference on International Arbitration will be held in the parlors of the Lake Mohonk Mountain House May 19–21. The program will include six sessions, two of a general nature, one for business men, one for educators, one for editors, and one for clergymen. Among the speakers at the general sessions are Señor Calvo, Minister of Costa Rica to the United States, Hon. William I. Buchanan, Hon. Alfred Mosely of London, Hon. John J. McLaren, chief justice of the court of appeals for Ontario, Ex-governor

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A. J. Montague of Virginia, Hon. M. F. Ansel, governor of South Carolina, Hon. Richard Bartholdt, Senator T. E. Burton of Ohio, and Hon. Frank Plumley, member of congress from Vermont. Among the educators who will address the Conference are Presidents Judson of Chicago, Wheeler of California, Faunce of Brown, and Finley of New York. A number of editors, business men and clergymen of prominence are also scheduled for addresses. Several foreign ambassadors at Washington and consuls-general at New York are also expected to give addresses.

The deep waterways movement seems to be responsible for the appearance of two recent monographs, *The Economic History of the Anthracite Tide-Water Canals,* by Dr. Chester L. Jones of the University of Pennsylvania (publications of the University of Pennsylvania, 1908) and *Artificial Water-ways and Commercial Development,* by A. Barton Hepburn (New York; Macmillan Company, 1908). The first named book, one of the by-products of the Carnegie Institution's projected economic history of the United States, is a distinct contribution to the literature of inland water transportation. Dr. Jones has consulted the original authorities, charters, reports to stockholders, legislative investigations, and has made wise use of his material. It is an interesting commentary on corporate methods to find that the early reports to the stockholders were sources of real information while recent ones are often conspicuous for their lack of such information. Mr. Hepburn's little book, while giving a general survey of the great canals of the world, is chiefly devoted to a history of the inception, construction, and working of the Erie Canal. The author points to the great opportunity which New York had in this waterway, and calls especial attention to the extravagance and inefficiency in management, to the persistent neglect of the great commercial opportunities which were in the hands of the state administration and, in contrast with its inefficiency, he points to the success of the private administration of the railways which have been competitors with this particular canal.

Dr. Paul L. Vogt has recently published (Publications of the University of Pennsylvania, 1908) *A History of the Sugar Refining Idustries of the United States,* with especial attention to the growth and position of the sugar trust. The author has made use of the original sources of material, supports his thesis with an abundance of statistical data, writes clearly, and the result is a work that is of value even to the special list.

Historians generally agree that the efforts of council and parliament to regulate prices and wages in the fourteenth century, when England

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was struggling to recover from the ravages of the black death, failed from the very beginning. This conclusion seems, however, to be based on *á priori* considerations only. Recently Dr. Bertha Haven Putnam has published a study of *The Enforcement of the Statutes of Laborers during the First Decade after the Black Death* (Columbia University Studies in Political Science, Vol. xxxii) in which we have for the first time an attempt to describe the administrative machinery used in the enforcement of these enactments and to measure the extent to which such enforcement was successful. Some of Dr. Putnam's conclusions are of great interest. Viewed in the light of circumstances and the political ideals of the age, the laws were not unreasonable, and during the decade studied "the wages and price clauses were thoroughly enforced." While the statutes did not accomplish their entire purpose, the author believes that they did much to keep both wages and prices from rising to unreasonable and calamitous heights. To the study is added an extensive appendix (461 pages) of documentary materials bearing on this subject, which the student of English society and politics in the fourteenth century will find a source of much valuable information.

E. B. K. Foltz's *The Federal Civil Service as a Career"* (Putnams, 1909, 325 pp.), although designed as a manual of information for applicants for positions in the civil service of the United States, is nevertheless full of interest to the general student. The author is an official in the treasury department and he writes from intimate personal knowledge of many things concerning the organization and administration of the national government. Deserving of particular mention are his chapters dealing with government business methods, the merit system, preparation for the government service, appointments, official salaries, opportunities in the public service, the civil service as a career, women in the government service, and the college graduate in public life.

Dr. William H. Allen's *Civics and Health* (New York: Ginn and Company, 1909, 411 pp.) is a stimulating contribution to the literature of municipal and school hygiene. It is an attempt to describe in simple language aided by appropriate illustration the environments, principally in urban communities, which produce physical and moral weakness among the young, and the methods by which existing conditions may be improved. He emphasizes in particular the value of physical examination of school children, of applicants for work certificates, and of adults in general. The book presents a constructive social program for all

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those who are in any way responsible for the physical preservation of the race, and is an appeal for more efficient citizenship through social coöperation in creating a more wholesome physical and civic environment.

Students and teachers of municipal government will be interested in a new treatise by Joseph A. Joyce on *Franchises, especially those of Public Service Corporations* (Chicago: Callaghan and Company, 1909, 850 pp). Mr. Joyce considers the nature, character, source and governing principles of all franchises; the source of franchises; the interpretation of the law governing them; public control and regulation; conditional grants; rates; exclusive franchises, etc. An appendix contains texts of the laws of New York and Wisconsin relating to the public service commissions of these States.

Longmans, Green and Company announce a new book by Frederick A. Cleveland entitled *Chapters on Municipal Administration and Accounting*, being a collection of various papers and addresses dealing mainly with the activities of the National Municipal League, the bureau of the census, and the bureau of municipal research.

Francis Newton Thorpe's *Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories and Colonies, Now or Heretofore Forming the United States of America*, the publication of which was authorized by an act of congress of June 30, 1906, has appeared from the Government Printing Office in seven volumes of about 640 pages each. The volumes include everything in Poore's collection and a good deal in addition, such as the texts of various grants, commissions and patents; and contain constitutional amendments and revisions to 1907. The work contains numerous citations, bibliographies and cross references. Earlier publication has been delayed on account of legal obstacles, but these were removed by a decision of the court of appeals of the District of Columbia holding that Mr. Thorpe had fully complied with the provisions of the act of congress for the purchase of the manuscript. Six thousand copies of the compilation have been printed.

The publication of a new edition of *Treaties Now in Force*, the last edition of which appeared in 1904, has been authorized by a concurrent resolution of congress and is expected to appear within about a year.

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L'évolution de l' arbitrage internationale (Philadelphia: 1908, pp. 122), by Thomas Willing Balch, is a reprint of articles published during 1908 in the *Revue de droit internationale et de législation comparée.*

Books dealing with the problem of church and state in France continue to appear. The latest contribution is G. D. du Dezert's L' Église *et l'État en France, depuis le Concordat jusqu'á nos jours, 1801–1905.* (Paris: Societê française d'Imprimerie et de Librarie, 1908.) The present volume reviews the politico-religious history of France during the nineteenth century, describes the more important controversies which took place between the state and the Catholic church, portrays the growth of the separation movement which culminated in the abrogation of the concordat in 1906, and discusses the present situation in its political and religious bearings.

Two studies of recent French legislation are Aristide Briand's commentary on the separation law of 1906, entitled *La séparation* (Paris: Fasquelle, 1908, 346 pp.), and D. Boisdon's *Contribution á l'étude du droit d' association* (Paris: Larose et Tenin, 1908. Vol. i., pp. 173). M. Briand discusses the terms and meaning of the separation law, characterizes it as a "victory of the majority against the Catholic church in general and against Pope Pius X in particular," and defends it against the criticism to which it has been subjected in many quarters. Boisdon in his study of the right of association explains the law of July 1, 1901, relative to associations in France, and compares its provisions with those of the law of 1884 which has been modified by the more recent act. The present volume, which we are given to understand is to be followed by another, deals with Professional Syndicates and Coöperative Associations; the author examines into their legal nature and discusses their status under the recent legislation.

Felix Moreau, the learned professor of administrative law in the University of Marseilles, whose manuals on administrative law are standard works in France, has lately written a new treatise entitled *Manual de droit public français* (droit administratif; 1er fascule) in which he summarizes the principal facts of French administrative law, notably those relating to the objects and character of the law, the sources and the general theory of administrative persons. Professor Moreau is a vigorous defender of the doctrine of juridical personality, of which the French writers, particularly Duguit and Michoud, make so much in their treatises and which seems to be especially seductive to the French mind.

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In the first part of his manual the author treats of the Public Services, Rights, Obligations, Acts and Administrative Persons. In the second part he deals with the Organization of Administrative Persons, the Organization of the State, the Department and the Commune, and the Public Establishments. In a third part he examines into the Rights of Administrative Persons, the Rights of Police, the Different Kinds of Public Liberty, and finally the Public Domain.

The last number of the *Revue du droit public et de la Science politique* (October–December, 1908) contains a lengthy contribution by Alfred Nerincx entitled *Les écoles de droit et le barreau aux États-Unis*, being a portion of a monograph which he published in 1904 on *Judicial Organization in the United States*, and which was crowned by the French Academy of Political and Moral Science. The author discusses from the point of view of a foreign observer (1) the American law schools, their methods of instruction, their curricula, examinations, etc., (2) admission to the bar and, (3) the character of the American bar, bar associations, the classes of advocates, etc.

A treatise on the constitutional and administrative law of the Ottoman empire has been written by A. Heidborn, a French publicist, under the title *Droit public et administratif de l'empire Ottoman* (Vienna-Leipzig, 1908). The author traces the development of the public law of Turkey in the successive stages through which it passed during the nineteenth century, points out the influence which Mohamedanism has had upon it and the distinctions which it has introduced, and shows how through the operation of foreign ideas it is gradually taking on the character of modern public law.

Students of Oriental politics will be interested in a monograph of Albert Maybon, entitled *La politique chinoise; étude sur les doctrines des partis en Chine, 1898–1908* (Paris: Giard et Brière, 1908), an account of recent party struggles in the Chinese empire, party issues, conflicts of interests, political forces, etc. The author has made use of a number of unpublished documents and has utilized the results of his personal observations made during an extensive visit in the far East.

Charles Benoist, the well known French deputy and writer on proportional representation has published a new book entitled *Pour la réforme électorale* (Paris: Plon, 1908. 322 pp). It contains an amplification

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of the author's well-known theories, in the light of recent political history in France. He reviews with great detail the schemes of electoral reform and explains the system which he would like to see introduced into France: the election of deputies according to the *scrutin de liste* method, a system of proportional representation, secret voting, more stringent measures against corrupt practices at elections, a reduction of the number of deputies, the ineligibility of deputies to succeed themselves immediately, etc.

Il Concetto della natura e il principio del diritto (Turin: Bocca, 1908, pp. 174), is an interesting monograph by Prof. Giorgio del Vecchio. The author asserts that the doctrine of the law of nature contains much that is of value, and that it does not necessarily conflict with the doctrines of modern legal philosophy. Professor del Vecchio has written extensively in the fields of political and legal philosophy; he has recently published *Il Sentimento Giuridico* (2d ed., Rome, 1908, pp. 26). and *Su la teoria del Contratto sociale* (Bologna, 1906, pp. 118).

H. A. Moulin, professor of international law at Dijon, is the author of a new work entitled *La doctrine Drago*, made up mainly of articles contributed by the author to various periodicals and now collected in book form (Paris: Pedone, 1908, vii, 386 pp.). The author traces the development of the Drago doctrine from its inception in the Argentine note addressed to the United States government in December, 1902, down to the adoption of the Hague convention of October 18, 1907, relative to the recovery of contractual debts. He explains the purpose and meaning of the doctrine, analyzes the discussions which it provoked in the Pan-American conference at Rio de Janeiro and at the second Hague conference, and interprets the Hague convention in its various bearings. He is of the opinion that the expression "contractual debts" does not exclude "dettes délictuelles," that is, those resulting from injuries sustained by nationals of third powers. He then considers the question whether public debts may be comprehended under the term "contractual debts" as employed in the convention, observing that neither expression has an exact and definite juridical signification. After considering all the circumstances connected with the history of the Drago movement he reaches the conclusion that the Hague convention applies to the collection of public as well as to the collection of ordinary private debts. Dr. Drago feared that this would not be the interpretation of the convention and desired that an express statement should be made that intervention

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should not be permitted for the collection of public debts. On this point he differed from the position of the delegates of the United States who admitted the right of compulsion for the collection of public debts. These and other questions of interpretation are intelligently examined by Professor Moulin and his treatise is a useful contribution to the literature of the subject. American students will find the meaning of the convention explained in an article by Prof. G. W. Scott in the *American Journal of International Law* for January, 1908.

Die Trennung von Staat und Kirche, by Karl Rothenbücher (München: Beckshe, 1908, 475 pp.) is, as the title suggests, a treatise on the relations of church and state in modern times. The author considers the system prevailing in the United States, Mexico, Brazil, Cuba, Equador, Ireland, Belgium, Italy, Holland and Canada. He distinguishes between the "Anglo-Saxon type" and "the Roman type," the latter of which is found in the lands where the Catholic church is dominant. He examines into the political relations between the state and the church, the struggles that have taken place, and the solutions that have been reached wherever the position of the church has been a source of controversy. The author indulges the hope that his study contains the data upon which may be formed a rational judgment as to the proper relations between church and state. The work is not a popular account but a thoroughly scientific inquiry, and is a distinct contribution to the literature of an old and difficult problem.

A. Andrêades, professor of political science in the University of Athens, is the author of a *History of the Bank of England* (London: P. S. King and Son, 1909, 496 pp.), which is said to be the most comprehensive work of the kind yet written. It is translated from the French into English by Mrs. C. M. Meredith. He traces the origin and development of the banking business in England, discusses the various financial schemes and policies that have been undertaken from time to time, and describes the history of the relations between the bank and the treasury. The work contains a preface by H. S. Foxwell, professor of political economy in the University of London, and a bibliography of the literature of the subject.

The first issue of the *Official Year Book of the Commonwealth of Australia* (for sale by P. S. King and Son) is a very useful publication. It contains a historical sketch of the federal movement in Australia result-

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ing in the creation of the commonwealth, and a wealth of statistical information with regard to population, health, land tenure, agriculture, forests, fisheries, mines, manufacturing, commerce, finance, education, local government, industrial legislation, etc.

Under the title *Uber den Staatsbegriff*, Werner Rosenberg has contributed a noteworthy essay on the theory of the state to the last number of the *Zeitschrift für die gesamte Staatswissenschaft* (78 pp.). Herr Rosenberg distinguishes between public law and private law associations, examines into the legal nature of the state in its relation to other forms of organization, takes issue with Gierke that the state is a "Genossenschaft" rather than a "Körperschaft," criticizes the organic theory, discusses the essential elements of the state, considers the question whether the so-called dependent state is really a state and answers this question in the affirmative, and examines into the nature of sovereignty. The concepts "state" and "independent state" he declares are not identical, though he maintains that sovereignty is indivisible—a view which, thanks to the teachings of Seydel and Laband, is coming to be the generally accepted doctrine of German scholars. Herr Rosenberg's study is based on the results of extensive research, and he analyzes and compares the opinions of practically every modern writer of note concerning the various points which he discusses.

Paul Errera, a professor in the University of Brussells, is the author of a comprehensive work on Belgian public law, entitled *Traitê de droit public belge: droit Constitutionnel, droit administratif* (Paris: Giard et Brière, 1909, pp. 821). This study is receiving high praise from European publicists for the clear, logical, original, and thorough manner in which the author has treated the constitutional and administrative law of Belgium. The only work which can be compared with it in these particulars is that of M. Giron written some years ago and now somewhat out of date. The present work is divided into two parts: the first deals with the constitutional arrangements of the state including such matters as guarantees of individual liberty, the public powers, the electoral system which, owing to the plural voting scheme, is quite peculiar, the relations between the police and the administration, the public finances, the "public force," and international relations. The second part deals with Belgian administrative law and the administrative system, and includes a study of such matters as the public functionaries, the patrimony of the state, the customs administration, the army, the

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local administration, police, education, worship, public charity, public health, means of communication, social legislation, and colonial administration. Following the example of Burgess in America the author has given much attention to civil liberty, its nature, content and guarantees under the Constitution. His chapters on the liberty of ownership and of association are particularly full and interesting, and the same is true of those dealing with the suffrage and proportional representation, the responsibility of the state, communal organization, and social legislation. His discussion of the royal prerogative in the Belgian system may be read with interest and profit in connection with Dicey's and Bagehat's views on the royal prerogative in England. The old question of the right of the courts to pass upon the constitutionality of statutes discussed so fervently by two noted Belgian jurists, Faeder and Verhagen, half a century ago, is reviewed by Errera, and his conclusion is adverse to the American practice. In an appendix the author gives a rapid historical review of the history of the Congo State, explains the political organization and discusses the nature of the relations subsisting between it and Belgium. There is also a reproduction of the text of the acts by which the Congo State has lately been transferred to Belgium. This work is a notable contribution to the literature of public law, and will take a place with the standard treatises on that subject. The same author has recently published an essay entitled *Notions Modernes de l'État*, in which he examines and criticizes the various theories of the state, notably the social contract theory, the organic theory, the theory of divine right, the theory of social solidarity, etc.

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BOOK REVIEWS

The Victorian Chancellors. By J. B. ATLAY, of Lincoln's Inn, Barrister at Law. In two volumes, with portraits. (London: Smith, Elder & Co., Boston: Little, Brown & Co. Vol. I. 1906. Pp. 466; vol. II, 1908. Pp. 476.)

The reader of these volumes is sorely tempted to the use of superlatives. Certainly no reasonable lover of biography could ask more of an author than Mr. Atlay has given in these sketches of the lives of the thirteen great lawyers who sat upon the woolsack during Victoria's long reign, and of their predecessor, Lord Brougham. One is at first a little vexed at the inclusion, among the Victorian chancellors, of Lord Brougham, who gave up the great seal in 1834, nearly three years before Victoria's accession, but after reading the author's sympathetic but just story of the life of that erratic and cyclopedic genius, he is compelled to agree with the biographer that any history dealing with Victoria's reign that did not take account of the life of Brougham would be incomplete and unsatisfactory. Like his much read but little trusted predecessor, Lord Campbell, Mr. Atlay was most fortunate in his choice of biographical subjects. The lives of these men who rose to be leaders of the English bar and won the greatest prize open to any member of the profession are full of interest even to the layman; while to the lawyer they set forth on a fascinating background of literature, society, and politics, the history of the long and doubtful struggle for law reform. The reader is no less fortunate in his biographer. Mr. Atlay, a barrister with an evident leaning to the common law, with that accurate knowledge of the law and procedure possible only to one in long practice, knows and tells in a most interesting way each step that was taken in reforming the dreadful abuses of the English law in the time of George IV., overgrown, as it was, with special privilege, burdensome and outrageous costs, and characterized by antiquated and cumbersome procedure and intolerable delay.

As a necessary setting for the legal history contained in these volumes, we catch occasional glimpses in the background of the broader vistas of the political and constitutional history of England, with which the author is evidently so well acquainted that we do not lose confidence in his

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accuracy even when we perceive that he shares the astounding ignorance of the merest outlines of the history of other lands, so frequently characteristic of even cultured Englishmen. Thus he naively states that "President Jefferson had approved a declaration of war with Great Britain" in 1812, nearly four years after that statesman had retired to his mountain retreat!

He is also full of those anecdotes that never fail to accumulate about striking personalites at the bar or on the bench. These stories are delightfully told, and never being allowed to degenerate into mere gossip, they add an undeniable charm and piquancy to the narrative that nevertheless retains its serious character as real history. His clever use of anecdote to add vividness to his narrative is well illustrated in the course of his account of Lord Westbury's (Bethell's) humiliation and fall. That brilliant but unwisely sarcastic lawyer had incurred the lasting enmity of the powerful and militant Bishop of Oxford, Samuel Wilberforce, popularly known as "Soapy Sam," by describing, in debate in the house of lords, a certain synodical judgment which had been drawn by Wilberforce as "a well lubricated set of words, a set of words so oily and saponaceous that no one could grasp it." Subsequently came the disclosure of Westbury's gross carelessness, amounting to misconduct in office, and the resolution of censure in the house of commons. In the bitterest hour of his disgrace, when coming from the Queen's closet, where he had delivered up the Great Seal, he met Wilberforce, but no word passed between them.

"One afternoon in the following session, Wilberforce and his fallen adversary met face to face in the lobby of the house of lords. Westbury stopped him and said, 'My Lord Bishop, as a Christian and a bishop you will not refuse to shake hands.' The overture was accepted, and Westbury asked him if he remembered where they last met. 'No,' answered the Bishop, more tactfully than truthfully. 'It was in the hour of my humiliation,' continued the former, 'and I felt inclined to say "Hast thou found me, O mine enemy?"' In relating the story the Bishop used to add, according to his biographer, 'I never was so tempted in my life as I was then to finish the quotation, but by a great effort I kept it down, and merely said, "Does your Lordship remember the end of the verse?" "We lawyers, my Lord Bishop," was the reply, "are not in the habit of quoting part of a passage without knowing the whole." It was highly probable, adds the Bishop, that Westbury's first action on going home was to search the Scriptures for the context. If he did so, he would have read these words, 'Yea, I have found thee, because thou

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hast sold thyself to work iniquity.' Westbury had taken up the burden of Ahab."

The style is delightful, and surprisingly so to one accustomed to the flat and dull periods so unhappily characteristic of most men of the law. Most effective and even picturesque at times, it is always simple, with no straining at effects, or note of affectation. This characteristic of the author's style, as well as his rare quality of character delineation by single, bold strokes, may well be illustrated by a few quotations. Thus when Lord Brougham, without experience in chancery courts or the slightest knowledge of the intricacies of chancery practice, received the Great Seal, he assumed the Herculean task of reforming the chancery court with so much assurance and boldness that "there was a genuine belief that the Augean stable was at last to be cleansed, and the accumulated débris of centuries swept away." Even the Duke of Wellington is reported to have said that Brougham was "the only man with courage and talent to reform that damned court." But the real situation Mr. Atlay strikes off with a sentence: "He immensely underrated the character of the work before him, and the extent of his own ignorance." This happy faculty of turning clever and unexpected phrases is most noticeable in his references to the mendacious biographies of that complacent self-seeker, Lord John Campbell, whose "pushfulness" and literary dishonesty sometimes excite a trace of spleen even in our kindly biographer. Thus he tells us that his investigations of the charges made against Lord Ellenborough by Lord Campbell in his *Lives of the Chief Justices* had caused him reluctantly to "assent to the dictum of the writer in the *Dictionary of National Biography*, that no one who has ever followed Lord Campbell to the sources of his information will ever trust him again." And he is willing to point the way to those who may desire to read a less charitable statement of Lord Campbell's literary misdeeds by referring, in the preface, to Sir Theodore Martin's *Life of Lord Lynhurst.* "Written with the expressed object of clearing away the heavy load which Lord Campbell had left upon Lord Lyndhurst's memory, the author is at times encumbered by the pious task of refutation, and I am not prepared to accept his conclusions in their entirety; but those who are curious to see how lightly the obligations of a biographer can rest upon Lord Campbell will follow with keen relish the application of the scalpel by Sir Theodore Martin."

He thus describes Lord Campbell's qualifications for writing *The Lives of the Chancellors*, after speaking of his love of the gossip and scandal of the bar mess and the benchers' tables:

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"Moreover he had the enormous advantage of portraying an existence every phase of which save one he had himself gone through. The law courts and the senate were his native heath; he had drunk delight of battle with his peers on either side of Westminster Hall. He had been poor, ambitious, successful, he had fought à toute outrance for every coign of vantage. The taste for intrigue with which he was so freely credited gave him a clue through the dark passages of history which simpler souls than plain John Campbell might have missed."

But he was too rapid and slovenly a writer to be "trammelled overmuch by the bonds of syntax. Long years in court, where the first word that came uppermost was generally as good as another, and where a full stop was the accident most to be dreaded, had endowed him with a fatal fluency."

Yet Mr. Atlay's criticism of Lord Campbell's biographical writings is kindly and eminently fair, terminating with this fine estimate of a great work:

"Yet, when all is said, there is a certain broad humanity about Lord Campbell's 'Lives' and a winning discursiveness, which retain for them on our shelves and in our affections a priority which we deny to books of far greater excellence and authority. The lawyer goes to them in his lighter hours as the scholar turns to Burton's *Anatomy* and the lover of classic English to Johnson's *Poets*. Making all deductions, the delineation of some of Campbell's dramatis personæ will challenge comparison with the best biographies in the language. The lives of Macclesfield and Thurlow and Mansfield, to name only the very best, will ever rank in the forefront of our literature."

In connection with the varying fortunes of the long struggle for law reform as told in these volumes, it is disconcerting to lawyers to observe that the enthusiasm for reform among these Victorian chancellors was in inverse ratio to their technical skill and learning in the law. Thus Lord Lyndhurst, American born, and known during his Oxford days as "Jacobin Copley," whom Lord Westbury thought the greatest lawyer of his day, entered public life as a Tory—having "taken the king's shilling," so his detractors said—and throughout his long life was a vigorous opponent of all material reforms. Lord St. Leonards, who rose from his father's wigmaker's shop to be the greatest authority of his time in the law of property, the acknowledged leader of the English bar and ultimately lord chancellor, did not see the need of or feel any sympathy with law reform. On the other hand, Lord Brougham, the greatest reformer of his day, was so far from being a great lawyer that Lord St. Leon-

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ards' spiteful comment that "If Brougham knew a little law he would know a little of everything" was almost justified. The others of the Victorian chancellors who accomplished any considerable reforms in the law were the plebeian Wilde, Lord Truro, whose fame rests more surely upon his prowess as an advocate than upon his excellence as a judge, and the irrepressible "Jock" Campbell, who, sound lawyer and judge though he was, had no love for the law itself, and regarded it very much as he did the paving stones upon which he walked—something to make progress upon in his pushful, self-seeking way.

Lord Truro's accomplishment in law reform was most surprising, exceeding in importance all that had been effected by his noisier and more brilliant predecessors. Mounting the woolsack with only slight knowledge of procedure in chancery, he secured during his short administration of nineteen months the correction of most of the crying abuses of that ancient and much dreaded court which had defied the assaults of all comers for three decades. The arrearages were provided against by making the chancellor's court merely a court of appeal and the creation of two "lords justices" with the same judicial powers as the lord chancellor, while the scandalous costs were cut in half by the simple expedient of abolishing the twelve masters in chancery and sweeping away "the whole nest of chancery sinecures." Lord Truro also courageously and ably supported the common law procedure act (1853), with which "disappeared the worst technicalities which generations of special pleaders, and of 'surrebutters' on the bench, had accumulated around the fabric of an action at law." Lord Cottenham is entitled, however, to the credit for initiating the legislation that resulted is this act.

One would need to search far before finding another such interesting group of men as these Victorian chancellors. The fascinating, if not wholly admirable, qualities of Lyndhurst and Brougham, the sturdy ambition and unceasing labors of Lord Campbell, the brilliant and biting wit of Lord Westbury, slack of principle, the prodigious intellectual powers of Lord Cairns, who broke all precedents by coming to the woolsack from an Irish birthplace, the keen classic intelligence and lofty, almost ascetic, principles of Roundell Palmer, Lord Selborne, all these have made their mark on general history, and are known to the profession and even to the general public. But even the lesser lights, Lords Cottenham, Chelmsford, Cranworth and Hatherley, whom we are accustomed to think of as of moderate ability and dull withal, Mr. Atlay's pen invests with an unexpected interest. Thus, Lord Cottenham (Charles Christopher Pepys), of whom "it was commonly asserted

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that without a good stock of judgments to consider and submit to writing, the lord chancelor would have found the tedium of the long vacation insupportable," is admitted to have been almost a total failure as a debater in parliament, unsuccessful as a legislator, and with few human sympathies outside of his narrower field of the law, but his undoubted excellence as a judge, his straightforwardness of mind and hard sense as a politician, are so clearly set before the reader as to show him no mean figure in the history of his time. Of Lord Cranworth (Rolfe) he says: "His career is strangely deficient in incident, it contains little to fire the imagniation of the neophyte; but like the books of the *Apocrypha*, it may be studied very profitably for example of life and instruction of manners." Rolfe did not, like most of the chancellors, pass from the position of acknowledged leader of the bar, through the law offices to the woolsack, but owed his promotion to the popularity gained while presiding at a murder trial of that peculiarly revolting kind that seems always to absorb popular attention. Although Lord Selborne speaks highly of Cranworth as a chancellor, saying that "in steady good sense, judicial patience and impartiality and freedom from prejudice he was surpassed by none," yet we are told that the business of the house of lords as a court was never in such evil case as when "Brougham and St. Leonards contended over the prostrate form of Cranworth." The meekness and generosity of Cranworth's spirit were so much more notable than his powers as chancellor that even the kindhearted Queen Victoria is reported to have greeted him upon his rather unexpected selection as chancellor a second time, instead of any of his abler but more troublesome contemporaries, with "Well, Cranny, Kingsley is right; it *is* better to be good than clever."

WILLIAM R. VANCE.

The Principles of Anthropology and Sociology in their Relation to Criminal Procedure. By MAURICE PARMELEE, M.A. (New York: The Macmillian Company. 1908. Pp. viii, 410.)

By criminal procedure, Mr. Parmelee understands a "process by means of which the class called criminal is separated from the rest of society" (p. 7). Hence he begins with a conception entirely distinct from that which attaches to the term in the minds of common-law lawyers, and his book will possibly be received with more sympathy by students of sociology and by those of kindred interests than by lawyers. But the first four chapters, which deal with matters of great

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importance outside of the lawyer's ordinary thought and reading, contain much that the latter ought to read and ponder.

For the lawyer, the weak point of criminology is that while it refuses to define crime—wisely from the standpoint of science—the law must proceed from defined crimes and from a definite, settled theory. Hence. for the lawyer, the analytical view of crime, that it consists in doing what the State has forbidden under sanction of public prosecution, in violating a public duty, imposed, for whatever reason, by the State, is the only tenable one. The criminologist's strongest point, that we must deal with criminal rather than with crime, well taken as it is, does not fit easily in the legal scheme, which in order to minimize the dangerous possibilities of magisterial caprice, corruption or ignorance, and to eliminate the personal equation in judicial administration requires generality, uniformity, and to a considerable degree mechanical action. His cardinal doctrine, individualization of punishment, is not easy of adjustment to the Anglo-American distrust of wide magisterial discretion and the common-law insistence upon the application of a settled legal measure rather than of even the most intelligent personal standard. The lawyer may perhaps feel that perhaps Mr. Parmelee has not wholly appreciated these inherent difficulties in the administration of criminal law which modern criminology brings out. He will feel, very likely, that a factor of no mean importance, the necessarily close contact of criminal law and administration with politics, has not been recognized sufficiently. Legislation imposing penalties and defining crimes is one of the most common and dangerous forms of oppression of one class or one portion of a community by another. While scholars may seek with Garofalo to differentiate natural from conventional crimes, legislation will not need the distinction. In consequence, one form of criminal procedure for all causes involving grave penalties will remain an indispensable protection to the individual. Even the manifest and manifold objections to the jury in criminal causes must yield, in the opinion of those who have had the greatest experience with juries, to the advantage of a dispensing power that accords, on the whole, with the common sense and general opinion of the community. Without some such dispensing power, the inherent mechanical tendencies in legal systems lead to worse results than the relaxing of logical principle and sometimes erratic short-cuts to crude equity characteristic of juries. Undoubtedly our law has carried protection of the individual much too far. Undoubtedly American criminal procedure has developed a sort of jury lawlessness. But the history that led up to the constitutional and common-law guaran-

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ties of individual rights and to the power of juries to render general verdicts may repeat itself, and is by no means to be ignored.

The lawyer will also feel that Mr. Parmelee has not always followed the best guides in seeking the doctrines and methods of our legal system, and that he may have assumed too lightly that what he reads in his continental authorities is fairly applicable in the radically different atmosphere of Anglo-American law. He will probably be amused at the suggestion that juries be required "to give a motive or reason for every decision" (p. 375), remembering Lord Mansfield's advice to the colonial judge, as well as at the statement that "it is almost if not quite the universal custom to exclude manual and day laborers" from juries (p. 359), and the proposition that "courses should be given in law schools acquainting those who may become judges with the general nature of expert testimony and with the occasions on which such testimony is needed" (p. 336).

But these are matters of minor importance. We need for a season to acquaint ourselves thoroughly with the work which has been going on on the continent. Adaptation of its results to the demands of our legal and political system will require long and deep study, and we ought not to ask a complete scheme or even a definite outline at the outset. It is of more importance to note that in the first four chapters, entitled respectively The Science of Criminology, Criminal Anthropology and Sociology, Society and the Criminal, and The Individualization of Punishment, the reader will find a clear, accurate and very readable summary of the classical work of Beccaria, of the views of the neo-classical school, of Lombroso's work and of his anthropological theory, of the philosophico-juristic theory of Garofalo; and of Ferri's work and of his sociological theory of criminology. He will find a good sketch, following Dallemagne's *Théories de la Criminalité*, of the theories of special classes of criminals and of the controversy between the Italian criminologists, of the school of Lyons. We will find a presentation of the theory of adjusting the treatment of the criminal to his character rather than to his crime and of the doctrine of individualization of punishment, founded chiefly on Saleilles' work, *L'individualisation de la peine;* matters with which every judge, every magistrate, and every legislator—if not every thoughtful citizen—ought to acquaint himself. America led the way in many notable reforms in this direction, such as juvenile courts, the indeterminate sentence, and suspension of sentence. But our criminal law is so rooted in theological ideas of free will and moral responsibility and juridical ideas of retribution, and both criminal law and proce-

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dure are so thoroughly mechanical, that we by no means make what we should of our discoveries.

The truth is, not excepting the law of real property and the law of procedure, criminal law is the most archaic part of our legal system. But it has to deal with some of the most modern of problems. It needs and will soon receive a very different form of study and a radically different type of treatment from those which have obtained in the past. Whatever we may think of the author's somewhat confident prophecy as to the results which the new science is to achieve for us (p. 91), we may welcome this concise and convenient summary of what continental scientists and philosophers have been doing and thinking.

A few clerical inaccuracies, such as the reference to "Alexander De Tocqueville" (p. 5) and the French form of reference to the *Ascaris* noted by Lombroso in one of his cases (p. 88), are perhaps inevitable in a first edition.

ROSCOE POUND.

Themis, Dike und Verwandtes. Ein Beitrag zur Geschichte der Rechtsidee bei den Griechen. By RUDOLPH HIRZEL. (Leipzig: S. Hirzel. 1907. Pp. 445.)

The wider and more critical survey of the fields of law, religion, and political and sociological history, which comparative study of late has made possible, has made even more clear the long recognized fact that the boundaries between law, custom, and religion, in early times, are hard to mark off with certainty. It is well known that the Romans personified as goddesses, the abstractions *Æquitas* and *Iustitia*, and that the Greeks, with their more vivid imaginations, had in *Themis* and *Dike*, two goddesses, very real incarnations of divine and human custom and law. But it is a pleasure to have our general or vague ideas corrected, illumined, or fixed; and it is fortunate that the study of the Greek Law and Justice has been made by such a scholar as Professor Hirzel.

Professor Hirzel begins with the older of the two goddesses, Themis, who was originally nothing more than a personification of good counsel. He finds her mentioned in Homer among the Olympian gods. In the war with the Titans she gives Zeus advice which brings victory. There is indeed no case found where Zeus does not take the advice of Themis. The fact that the great Father of the gods is seen to be dependent upon her as his adviser, as the Roman magistrate upon his consilium, and the Attic archons upon their councillors (*Πάρεδροι*), brings about the use of

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Zeus and Themis as identical terms. But the province of Themis as the giver of advice is not restricted to the gods alone; she also gives good advice to men. At Delphi she imparts oracles to those who seek her counsel, and her altars stand in the market places in the different cities. Now, the oracles, advices, or answers (which, in a way, correspond very nearly to the responsa of the Roman jurists) of Themis, who, although conceived of as identical with Zeus, was nevertheless used as an approachable intermediary, were called themistes, and considered Zeus-given advices. Two of the famous kings of ancient times, who held their power as delegates of Zeus, were Minos and Agamemnon. Minos, according to the Greeks, made his reputation rather by giving keen counsel than by giving laws; Agamemnon ruled with sceptre and themistes. The giving of advice by Zeus-Themis passes easily into the right to give such advice. When, later, the right to give advice and to pronounce law are found to belong to the same person, an explanation seems to be forthcoming, and it rests on the old judgment that where Themis is, Justice must also be. The fact that the Latin words consilium and præceptum, like the German word Rat, have this double meaning, and that a consul, according to Quintilian, was a magistrate who either gave advice or pronounced judgment (sit enim consul a consulendo vel a iudicando, I. O., I, 6, 32) help to make this conception very probable. Greek philosophical skepticism took a great many prerogatives away from the gods. In the later writers Themis and the themistes are dethroned. They no longer retain the meaning of god-given advice, which was held to be unwritten law, but they come to denote all laws, even written ones. It was at this time that Themis became the goddess of law and its study. Themis, however, despite this slight generalizing tendency, never lost its force as a god-given precept. Homer (Odys. 14, 56ff.) calls it Themis, i.e., a holy law, to honor the stranger. The conclusion of the matter is, that Themis is the same as the Roman fas, and means the sentence of a god.

Together with Themis, the doer of good to gods and men, in Homer and Hesiod, is found Dike, the daughter of Themis. Sometimes she appears as the sentence of the judge, as Right or Justice, and often as Manner or Custom. Hirzel challenges von Ihering and Jebb, who say that all law, and therefore the law of the Greeks, gets its origin from custom, and that Dike mirrors all the changing meanings of this development, and asks: Is Law the root from which Dike grew? No! She has too much strength and vitality to have come from an abstraction, neither can she have come from legal decisions or Justice, which first need a sanction or a

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precedent. The sentence of a judge was founded, not on codified or customary law, but was itself creative. Here it was that law first represented itself with a power which at once took hold of the imagination, and here it first developed its name, Dike. Herder says that most contending parties chose as judge the cheapest and shrewdest man, but the Romans chose a wise and experienced one. Hirzel, however, shows that the Greek judge had more good qualities than either. He had knowledge of law, wisdom, and common sense, as a matter of course, but he had also an innate something which partook of the divine. Intolerant democrats as the Athenian judges were, they could not take the wand, the old regal symbol, without showing the sense of importance which attached to the godgiven right of thereby giving an infallible decision. Aristophanes caricatures this feeling of importance with which a poor three obol democrat assume airs "as if he were a sovereign, which is the soul of the commonwealth" (Hobbes, *Leviathan* 111, 42), but the fact is made plain. This wand of the judges is the direct descendant of the ancient one, by the strokes of which the judge rendered his decision. In Homer and Hesiod, the straight stroke meant the right, the oblique stroke, the wrong. When administration of justice was personified, Dike was given the judge's wand as her emblem.

The idea of justice among the Greeks, according to Hirzel, takes a development which can be shown positively by following the meanings of the word Dike. Schopenhauer makes injustice the positive and original, justice the derived and negative idea; Hobbes says: "Whatsoever is not unjust, is just," but Hirzel makes Dike express it all. Dike is, first, the judicial decision asked for by contending parties. This decision, later, carried with it punishment and revenge, and out of the simple concentrated power of the judge's decision grew the whole proceedings at law. Retaliation, as shown by the use of the word Dike, came later in the Greek mind. The judge in the oldest time was restricted to the decision as to which party spoke the truth. Dike, then, was just, because it was true (there was no distinction, such as the Romans made later, between iuridici and veridici). That is, Truth and Justice belong originally together, in fact Dike (*Δίκη*) and Aletheia (*Ἀλήθεια*) appear as daughters of Zeus. Second, Dike gets herself identified with custom and retaliation. With the growth of self interest, which runs away from Truth, Dike and Themis part company, for Themis and Truth are not found together, but Dike and Truth stick close together. Now, Custom has nothing in common with experience and truth, but rests on example. It is only the union of Dike with Truth which saves her from entire

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identification with custom, both good and bad. Again, when retaliation impressed itself so strongly in the word Dike that it was often taken as her original signification, it was again only the close alliance with Truth which saved her. Third, Dike is the strongest influence in Greek life, and yet does not use force (*βία*) in the exercise of it. Dike has been called a theoretical fancy bound to Truth, and made to look a sorry figure beside the powerfu Ius of the Romans. But it is just here that Hirzel makes clash the different legal ideas of the Greeks and Romans. The Roman Ius conferred power over persons and things, the Greek Dike vouchsafes only a claim on services, and appeals to the feeling of duty; he who has the Ius, takes what belongs to him, but Dike is simply given to him who is favored thereby: the Ius of the Romans depends on vis, might, the Dike of the Greeks is no whit the weaker, yet does not rely on *βία*, force. The decision of the magistrates in Greece were never called dikae, because they had not the authority of the judge, but such decisions at Rome could well be iura, because their source was the highest original power, the power of the people. Fourth, Dike appears as goddess of arbitration, and goes hand in hand with Truth. Fifth, Dike gets the connotation of Revenge. As the helper of Zeus, early poetry adorns Dike with every virtue. With Hesiod, however, she begins to be thought of as an Erinys, who looks for revenge. The features of the goddess change with the meaning of the word *Δίκη*. From being the goddess of justice she becomes the goddess of revengeful punishment, and the Stoic Chrysippus is even ready to call her the goddess of cruelty. Sixth, Dike leaves her mother Themis to become incarnate, is humanized, extends her influence even to the beasts, and to the lower world. Still, although Dike goes her own way, her domain often touches that of her mother Themis. Dike rules the life of men, Themis takes cognizance of men's affairs; Themis and Dike were originally not a complex of laws, but one act. Themis, however, becomes the advice, the command, of the head of the house, of the king, or of God; Dike is the deciding sentence of the judge, and both are one in their stand against every kind of presumption. Dike, however, is never a beneficial and solicitous goddess, as is Themis, but remains she who has Truth in mind, and does not advise in friendly fashion, but commands with threats. Themis and Dike are comparable to the ius fasque of the Romans, for in ancient times with both Greeks and Romans all law had the divine sanction. In both cases, the divine and human law separate, and later come again to a common humanization. Seventh, Dike becomes a Virtue. The three virtues that run through history are Piety, Bravery and Justice,

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and it is the new virtue, Justice, to which Dike attaches herself, and with which she becomes identified (*Δικαιοσυνη*). Cicero grounded ancient law, iura, on utilitas communis, Pufendorf with his theory of contract makes it consensus tacitus. But Justice with the Greeks was more than a fulfillment of private agreement, or a taking of requital. As far back as Solon came in the iustitia distributiva founded on Dike. Finally, except in the world of make-believe, that of the poets, Dike absorbed all the attributes and privileges of Themis, and expressed to the Greeks the entirety of the law. Dike, then, the original judicial decision, conquers Themis, the decision of gods and rulers. Over the world of mankind, whether under her own name, or in the name of equality which she assumes, she lords it more widely in each succeeding age.

Thus far Themis and Dike have been the two sources of natural law and its philosophy, but now there comes to the front another manifestation of right or natural law in the form of Thesmos, fixed law (*θεσμός*). Thesmos, the result of an activity, never became a real god in personality, as did Themis and Dike. In the early sense, Thesmos is to be taken as the pervading principle of single Nomoi. Later in Athens, the Thesmos, as administered by the Thesmothetæ, is the regulation of legal procedure as a whole, according to the law. It can be likened to the edictum perpetuum of the Roman prætor. Just as Dike took the functions of Themis, and broadened out over the whole field of Greek law, so Thesmos began to gain in influence. It was the ideal of a law-giver to compel the people to obey his laws not only through force, but also by persuasion. Thesmos, as a regulation, differed from Themis, as Counsel, and from Dike, as Judgment, but did take on later some of the religious signification of Themis. He who did not follow Themis, was sufficiently punished by the outcome for not taking her advice. In the word Dike, was inherently the punishment, but Thesmos as law had to have the penalty attached in order to get itself carried through. Custom had a beginning, and on it rests Thesmos. The ancients sought for the beginnings of customs, and inclined to fix them on some one person. Strictly the difference is that the binding force of growing custom comes after years of precedent, while the binding force of Thesmos begins from the first moment, whether it comes from the personal authority of some founder, or because of a sworn agreement.

Finally, added to the many crossed principles of lawmaking, to Themis as the counsel of the higher sort, to Dike as the judicial decision, and to Thesmos as the simple expression of a sovereign will, came a new idea which sprang from manners and customs, the Nomos (*Νόμος*). Hir-

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zel takes up the history of the word Nomos in the epic poets, and by its usage as far as Clisthenes, shows that the word meant customs or habits, which, as in Hesiod for example, both animals and men had alike. He brings in from the writers of the fifth and fourth centuries many examples to prove the old meaning of the word as still used for customs or manners. Slowly, however, the idea came that in Nomos, also, a command was implicit, and as it became stronger it brought out Nomos sharply and clearly as a new idea. The word came to mean orders of tyrants, and the rules of the sciences and the arts. Later, Nomos appears as the source of Dike, not merely an expression of it. The youngest legal principle becomes the most powerful. The new real son of Zeus is Nomos, and he gets all the hymns of praise formerly offered to Dike.

Speaking generally it may be said that Professor Hirzel has brought together all the literary occurrences of the words with which he deals. He has mastered the intricacies of his subject and adheres to the natural divisions. The only criticisms that the work would seem to justify are that the notes are too heavy and overbalance the text, and that the author displays an excessive desire to ascribe to the Greeks the creation of all possible forms of law. If sovereignty be needed as the basis of law, Themis is present to fill any gap in the argument; if customary law be held to furnish the basis of legal development, Nomos is at hand; if the historical method requires illustration, Dike is presented with a history continuous enough to satisfy all demands, and if the comparative method be demanded the author has sufficient facts in hand and does not stint their use.

R. V. D. MAGOFFIN.

LE DROIT INTERNATIONAL: LES PRINCIPES, LES THEORIES, LES FAITS. PAR ERNEST NYS, Conseiller à la Cour d'Appel, Professeur à l'Université de Bruxelles, Membre de la Cour permanente d'arbitrage. (Bruxelles: Alfred Castaigne. Paris: Albert Fontemoing. Tome iii, pp. 758. 1906.)

The first two volumes of this work were noticed in an earlier number of this REVIEW (vol. i, pp. 145–148). The elaborate treatment which they contained of certain topics gave promise of a more comprehensive treatise than the completed work now presents. More than half of the present volume (463 pages) is devoted to the subject of war, while the law of neutrality is covered in 138 pages, and the important subject of arbitra-

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tion is summarily dismissed in 20 pages. Other topics included in this volume are negotiations, treaties, means of coercion other than war, the seizure and judgment of prizes, and peace.

Our author shows a wide acquaintance with the literature of the subject, particularly with the writings of continental publicists, from whom by far the greater part of his citations are made. Recognizing custom and treaties as the only sources of international law, he practically ignores case law. While certain English and American writers have displayed an undue propensity for case-hunting, it is just as bad to err in the other direction, as M. Nys has done. Even granting that the decisions of prize courts and courts of arbitration are not sources of law in the strict sense, they are at least entitled to respect as evidence of what the customary rules of law are. On many points of law the decisions of prize courts and state papers afford the only conclusive evidence as to the present attitude of states and therefore they can not be ignored in any treatise which aims at more than a purely theoretical discussion.

The chapters on arbitration are not satisfactory either as an historical survey or as a critical exposition of the subject. The author makes a general application of Lorimer's statement to the effect that in the Alabama case "the decision of the arbiters rested on a definition made for a special purpose, and not on the common law of nations; it was the treaty of Washington of May 8, 1871, not the sentence of the arbiters of September 14, 1872, which prevented war." While this statement may be true of this case, a like objection can not be made to all arbitral decisions. The provisions of the convention establishing The Hague Court are given in outline, but there is no reference to the cases that have actually come before that tribunal.

On most of the disputed points M. Nys sides with the continental writers and condemns many of the English and American doctrines, such as the doctrine of *continuous voyage*. As a whole the work is well written and interesting. As an historical exposition of the rules of international law it has decided merits, but as a criticism of existing law it falls short of what might be expected in a work of its pretensions.

JOHN HOLLADAY LATANÉ.

THE LAW OF WAR BETWEEN BELLIGERENTS. By PERCY BORDWELL. Chicago: Callaghan and Company. 1908. Pp. xxiv, 374.)

It is as yet too early to ascertain the full effect which the work of The Second Hague Conference will have upon the course and development of

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international law. One result of that gathering, however, which is already quite apparent, is the largely increased output of literature concerning the matters with which the conference dealt. The greatest achievements of the conference were not those pertaining to the law of war, yet even in that field it accomplished noteworthy results. These results, together with those of the Geneva Convention of 1906 are carefully noticed in Part II of Professor Bordwell's book.

The two parts of the book are quite different in method. Part I comprising more than half the book, consists of a history of the law of war from the earliest times to the close of the Russo-Japanese war, interspersed with historical notes concerning the codification of the law of war in international declarations and conventions. The early history, down to the close of the Napoleonic era is very cursorily treated, after which Professor Bordwell takes up more in detail the later wars, with the exception of the Crimean, which, curiously enough, he scarcely notices. His method is to recount the actual practice during the war and to compare such practice with existing and later international agreements. This part is somewhat lacking in proportion and is not, of course, comparable in value with the special works upon which it is largely based. It will, however, prove useful as giving a general view of the whole history.

Part II consists of a commentary on the Hague and Geneva Conventions. It does not deal with the results of those conventions in the way of broad generalization, or with reference to their significance as a whole in the development of international law, but takes up in detail the specific conventions adopted and comments upon each one in a careful and painstaking manner. It thus constitutes a thorough and valuable commentary on the law of war between belligerents in the light both of actual practice and of the latest international conventions.

Professor Bordwell does not attempt to give a formal definition of war, and he takes for granted that *inter armes non silet jus*. He rejects the German principle of necessity as an overruling factor in war, and it may be questioned whether in doing so, in common with Westlake, Oppenheim and other English writers, he does not evince a tendency to depart from the purely phenomenal basis of the science. The book as a whole lies halfway between the special monograph and the complete treatise, and, as might be expected, exhibits both the advantages and the disadvantages attaching to works of such a character. It is necessarily incomplete, for it treats only the law of war as between belligerents, and thus does not touch upon the questions of constantly growing importance

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concerning the relations between belligerent and neutral states. The author, however, promises to deal with the latter aspect of the subject in a subsequent volume.

J. M. MATHEWS.

Some Neglected Aspects of War. By CAPTAIN A. T. MAHAN. U. S. N. (Boston: Little, Brown, and Company. 1907. Pp. xxii, 193.)

As the title would indicate, Captain Mahan has, in this little volume, called attention to certain phases which are often overlooked or neglected in the discussions centering around the questions of war and peace, armament and disarmament. He criticizes the position of many of the advocates of international arbitration in contending that all war is wicked and that it is never justified. It is his opinion that universal peace will be retarded, rather than advanced, by neglecting to look the facts straight in the face and to consider them calmly and diligently.

To illustrate his point that, under present conditions, war is sometimes necessary and justified, he cites the fact that the governments all resort to force to maintain internal peace and order, that evil could often be overcome only by force, and that by analogy, states must resort to force. Just as individuals felt compelled to obey their consciences when it came to a question or right of wrong, so it was with states. The conscience of the state is embodied in the phrase "honor and vital interests" according to Captain Mahan. He takes the position that there are certain things which are so vital, not only to the present generation, but to posterity, that no state can afford to submit them to an outside tribunal for adjudication. It must not be understood that he approves of war *per se*, for he thinks that at some future time it may become possible to abolish war, but that our present efforts should be directed towards the reduction of the evils of war with a view to its ultimate abolition in the future.

The volume consists of six papers, four of them being contributed by Captain Mahan, and the other two by Messrs. Henry S. Pritchett and Julian S. Corbett. The papers by Captain Mahan are The Moral Aspect of War, The Practical Aspect of War, War from the Christian Standpoint, and The Hague Conference of 1907, and the Question of Immunity for Belligerant Merchant Shipping. The one by Mr. Pritchett is The Power that Makes for Peace and that by Mr. Corbett, the Capture of Private Property at Sea.

The volume should be of interest to all students of international law,

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and especially to those who are endeavoring to secure universal peace by arbitration or other means, for there will be found stated here some of the practical considerations which cannot be disregarded in the settlement of the question, whatever may be its final outcome. Captain Mahan is not an extremist, and certainly the extremists on the side of arbitration should read with care the papers contained in this volume.

H. E. FLACK.

The Laws of War on Land. By T. E. HOLLAND. (Oxford: Clarendon Press; London and New York: H. Frowde. 1908. Pp. viii, 149.)

The Hague conference of 1907 readopted the convention originally agreed upon at the conference of 1899, according to which the powers undertook to issue instructions to their armed land forces in conformity with the règlement annexed to the convention. The same mistake was committed, however, as in 1899, in not fixing a time limit within which the agreement should be carried out. Of the few states which have thus far officially published, for the guidance of their armies, anything more than the bare text of this règlement, the most important are probably those of Russia, Germany, and England. The Russian instructions of 1904 possess the practical advantage of having been launched in the face of actual war, but although based on the Hague Regulations, depart from them quite freely. The German *Kriegsbrauch im Landkriege*, issued by the great general-staff in 1902, is unfortunately largely historical in character and bears little direct relation to the Hague regulations. The most satisfactory of the handbooks of instructions was the small volume entitled *The Laws and Customs of War on Land, as defined by the Hague Convention of 1889*, issued by the British war office in 1904, and edited by Professor Holland with an introduction, supplementary matter, and explanatory notes. This volume contained a systematic arrangement of the text of the Geneva convention of 1864, the declaration of St. Petersburg, and the first Hague conventlon relative to the laws of war. Supplementary rules concerning those points not covered by the texts were formulated and iucluded by Professor Holland. Of this book the work under review is practically a revised and enlarged edition, though it has apparently lost something of the official character of the earlier work, and is now issued as much for the convenience of the public as for the guidance of the armed forces. The revision has been prepared in the light of the Geneva convention of 1906, and of the Hague

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conventions of 1907 relative to the commencement of hostilities, the laws and customs of war on land, and the rights and duties of neutral powers and individuals in time of war. In the revised edition, the supplementary matter and explanatory notes have been considerably increased in volume, and the appendix has been augmented by the addition of historical notes on national instructions to armed land forces, and on the various diplomatic acts which relate to war on land. The French texts of these acts, together with English translations, are also added.

In the introductory chapter Professor Holland criticises certain of the Hague Conventions on the ground that they intermix the rights and duties of states with those of individuals. This is formally true, but the intermixture was merely the result of a convenient mode of speech, for the conference was not competent to confer rights or to impose obligations upon individuals as such. The book as a whole commends itself to one's judgment as a careful and judicious piece of work. In lucidity of arrangement and in adaptability to practical usefulness it is easily the best of the attempts thus far made to codify both the written and the unwritten laws of war on land.

J. M. MATHEWS.

The Treaty Power under the Constitution of the United States. By ROBERT J. DEVLIN. (San Francisco: Bancroft-Whitney Co., 1908, pp. lxxx, 864.)

The Treaty Power under the Constitution of the United States has less to distinguish it from a mere compilation than Butler's *Treaty-Making Power*; in it are arranged in an orderly way: opinions of the courts, rulings of the executive departments, statutes, treaty stipulations, late magazine articles and congressional debates bearing upon the conflict between the law-making power and the treaty-making power. As to the agreements of the executive which should be ratified by the senate, nothing is said, although some chapters are devoted to topics which would seem remotely connected with the title of the book, e.g., extradition, diplomatic and consular representation, foreign judgments, naturalization, expatriation, and claims against governments including the holdings of the United States court of claims. The author would have us believe by many of his citations of authority that he has had access to the manuscripts of the department of state; the citations are, however, the

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same as those which are given in J. B. Moore's publications on extradition and international law.

PROBLEMS OF CITY GOVERNMENT. By L. S. ROWE. (New York: D. Appleton and Company. 1908. Pp. 358.)

Dr. Rowe has given us in this very readable volume the results of his years of observation and teaching on municipal problems. Composed mainly of essays and papers which first saw the light of day in the magazines, he has woven them together into an effective account of the newer tendencies in city life which are making for progress.

The chapters on the Nature of the Municipal Problem, the Political Consequences of City Growth and City Government and American Democratic Ideals set forth his thesis. The other chapters are in elaboration, exposition and illustration of these.

"There is every indication," to quote Professor Rowe, "that we are gradually adapting our political beliefs to the manifest requirements of our municipalities. In this process of adaptation we must be prepared to make many changes, both in the organization of our government and in our attitude toward that government. Whatever these changes may be, anything that tends to diminish the alertness of the population will to that extent lower the tone of its civic life. The relation between city and State and the organization of the city government must be arranged so as to foster this alertness, and the mechanism of government must be so adjusted as to make both the control of public opinion and the enforcement of responsibility easy, ready, and effective."

With keen and forceful incisiveness it is pointed out that any form of government which arouses in the people the belief that they have constructed a self-acting mechanism not only tends to lower the standard of civic effort, but relieves the government of that salutary control of public opinion without which efficient government is impossible. The hypercritical, however, might regard the position assumed by Dr. Rowe in his discussion of American democratic ideals as inconsistent with the greatly needed caution just referred to, for he argues strongly that "the first step in the development of greater civic vigor is some method of bridging this gap, which shall include, primarily, *such an extension of municipal functions* that the community can grapple with the problems which can be solved only through organized action; and secondly, *such a readjustment of the machinery of government* that positive action will be fostered rather than made increasingly difficult, as under our present

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system. The ideas of governmental organization, which we have borrowed from an earlier period, are no longer applicable to the conditions that prevail in our cities."

The inconsistency, however, is a surface one only for the modern reformers, and Dr. Rowe is certainly entitled to a chief place among them, while advocating a readjustment of the mechanism of government, lose no opportunity to create and educate a sound public sentiment and an abiding interest in public, and especially municipal, affairs. And in this connection I want to digress to the extent of expressing the hope that Dr. Rowe's recent useful and highly successful activity in South American affairs will not divert his interst or work in the field of municipal government.

The discussion of the Relation of the City to Public Utilities, illuminated as it is by a series of chapters dealing with certain concrete cases, is on the whole as helpful as any which I have seen set forth in similar compass.

Believing in an intelligent extension of the activities of the city, and that the present interests of municipalities, are best subserved by a relatively short franchise grant with periodical renewals, the principles that should govern the granting of franchises are thus formulated:

1. The power to determine the charges of public-service corporations is of little value unless there is combined therewith careful control over capitalization.

2. Control over capitalization cannot be made effective unless it is combined with public supervision over the accounting of such corporations.

3. In order to prevent the payment of stock dividends new stock should not be issued at less than its market value.

4. No universal rule can be established with reference to the length of franchise terms. Such terms should range from twenty-five to forty years, depending on the size of the city and the probable annual net return from the use of such franchise.

5. The city should exact compensation in the form of lower charges rather than in large financial returns.

6. At the close of the franchise term the physical property of the company should revert to the city at its appraised value.

One wishes that the Index were fuller and more analytical and that there was some reference to the time and place of the first appearance of the chapters; but these mechanical omissions do not detract from the literary and civic interest and value of the book which is a good, clean,

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straightforward argument for simplicity and adaptability in municipal government. It is a book for the general reader and student, rather than for the classroom, although it will prove of value and interest as collateral reading.

CLINTON ROGERS WOODRUFF.

Municipal Ownership. By LEONARD DARWIN. (New York: E. P. Dutton and Company. 1907. Pp. 149.)

Five years ago Major Darwin gave us his volume on *Municipal Trade*, a work which remains to the present time the most comprehensive as well as the most scientifically-written monograph upon the subject of municipal ownership and operation of public utilities in British cities. Last winter the authorities of Harvard University secured the writer for a short series of lectures upon this theme and those who were privileged to be among his hearers will have no hesitation in commending to all who profess an interest in municipal problems this little volume which contains the four lectures delivered at Harvard.

In general the volume contains a condensed restatement of the case against municipal trade which the author set forth so effectively in his larger work. Some new arguments have been included; the terminology has been Americanized; and more emphasis is placed upon the relation of labor to municipal politics under a régime of direct operation. The writer's convictions concerning the important dangers which follow in the train of municipal socialism are nowhere concealed; yet there is always an earnest effort to be fair in criticism and conservative in positive statement. From the gross extravagances of assertion which have characterized much that has been written on both sides of the municipal ownership controversy this little volume is entirely free. Major Darwin presents his case loyally, effectively, and lucidly; but entirely without resort to any devices designed to catch and hold the popular ear. The volume was prepared before the National Civic Federation published its voluminous report on public ownership in English cities; but now that this extensive collection of data has been made available, one may find no better introduction to it, from the standpoint of the individualist, than the general survey of the situation contained in Major Darwin's book.

WILLIAM BENNETT MUNRO.

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The Dangers of Municipal Ownership. By ROBERT P. PORTER, director of the eleventh census. (New York: The Century Company).

Mr. Porter has furnished the opponents of municipal ownership (using that phrase in a broad sense, as including municipal operation, although carefully speaking it does not), with a clever and vigorous handbook. That they have not lost sight of this fact is evident from the pains they are taking to give it a wide circulation through the publicity bureaus which are now at work in an endeavor to offset the growing demand for a correction of the evils incident to the private ownership and operation of municipal monopolies,

The text of Mr. Porter's argument is to be found in the opening of the second chapter, where he declares that "trading with the public credit, whether State or municipal, *must of necessity* [italics mine] lead to stupendous financial liabilities, add to the burden of the voters, weaken municipal credit, bring about inequality of taxation, interfere with the national laws of trade, check industrial and scientific progress, stop invention, discourage industrial effort, destroy foreign trade, establish an army of officials, breed corruption, create an aristocracy of labor, demoralize the voter, and ultimately make socialistic communities of towns and cities" (pp. 26–27).

This quotation gives a fair idea of Mr. Porter's style and his method of argument. The whole book reminds one of Mr. Delmas closing argument in the Thaw trial. It is brilliant, perhaps, but not convincing argument. The fact that he cites Russia as an object lesson (chapter 3) is a further interesting illustration of his methods and his disingenuousness.

The book suffers by comparison with Senator Howe's *The City: the Hope of Democracy*, which is suffused with earnestness and sincerity of purpose. No matter how much one may differ with Mr. Howe as to a particular point, one never loses sight of his profound desire to be helpful; of his anxiety to serve the cause of human progress. Mr. Porter handles the usual arguments against socialism with skill; but he fails to identify municipal ownership and socialism, a rather serious omission. He is bold in statement, and vigorous in denunciation, but nowhere does it appear that his heart is in his work. He has a thesis to prove, and he goes about it with a certain ability and facility; but when he has finished, the opponent and the advocate of municipal ownership are precisely where they were when they started out.

CLINTON ROGERS WOODRUFF.

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Essays in Municipal Administration. By JOHN A. FAIRLIE. (New York: The Macmillan Company. 1908. Pp. 374.)

In an attractive volume Professor Fairlie has brought together a number of essays, nineteen in all, which he has written at different times upon various matters within the general field of municipal administration. The essays fall into three groups, the first relating to problems of organization and the relations of cities to the State. In a second group are placed those which deal with divers civic functions and activities, while a third division of the book includes four interesting essays on city government in various European countries. A short chapter on the methods of instruction in municipal government concludes the volume.

During the last ten years or more Professor Fairlie has been one of the most generous as well as one of the most informing contributors to the literature of municipal administration, and students of this subject will doubtless welcome this volume which places at their disposal, in convenient form, many interesting discussions heretofore scattered about in publications which were not always easy to obtain. Having been written for different audiences the essays vary considerably in scope, in method of presentation, and in the degree of thoroughness with which they undertake to deal with their respective topics. The chapter on Municipal Corporations in the Colonies, for example, embodies quite the most painstaking study which has yet been undertaken in this field, and leaves little more to be said upon the subject. On the other hand the essays which deal with matters of administration in European cities do not profess to be more than the gleanings of a vacation tour, written in an easy vein for the information of newspaper readers. Even these are of very distinct value, nevertheless, as embodying the shrewd observations of one who has been trained to the exercise of an unbiased and scientific judgment on matters of local administration, and who is, moreover, able to bring to bear upon the special problems of Vienna, Milan, or Birmingham, a useful store of general administrative knowledge.

All the essays give evidence of the writer's breadth of view, his passion for accuracy in even the smallest details, and his ability to state his facts logically and his opinions forcibly. Special attention ought to be directed to the chapters on The Relation of Civil Service Reform to Municipal Administration and on American Municipal Councils, in which these qualities of merit most prominently appear. In an age when the cause of municipal reform must needs stand sponsor for much that is written with more zeal than knowledge, the sober, analytical spirit of these essays makes them doubly welcome.

WILLIAM BENNETT MUNRO.

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The Commerce Clause of the Federal Constitution. By FREDERICK H. COOKE. (New York: Baker, Voorhis and Co., 1908. Pp. xcii, 302).

In his preface Mr. Cooke laments the lack of unifying principles in the decisions under the commerce clause. "It seems desirable, therefore," he says, "that one at all comprehensively writing on the subject should at least attempt to make a statement of such principles." The carrying out of this aim makes the text an essay on what the law ought to be, rather than a textbook of the law. Of more practical value are the footnotes, which occupy about two-thirds of the main body of the book.

Mr. Cooke presents the following definition of "commerce" in the commerce clause: "Commerce consists in transportation, (not necessarily all transportation, but certainly) including transportation of persons, tangible property, and (at least under certain conditions) of intelligence." The sole merit of this definition is that it emphasizes transportation as an essential element. The definition is poorly expressed, in not clearly including contracts involving transportation, which the author means to include. It would seem, also, that the word transportation must be qualified; for there is no reason to believe that transportation otherwise than in the course of business—as, for instance, driving or motoring across a state line for pleasure—should be included. Moreover, the inclusion of all contracts involving transportation is too broad. This is not merely a fault of expression; it is due to a radically mistaken view on the part of Mr. Cooke. In his opinion, insurance contracts between persons in different States are interstate commerce, if not because commercial intercourse, certainly because involving transportation of the policies. So, also, he criticizes Williams v. Fears (179 U. S., 270), in which the business of hiring laborers to be employed beyond the State was held not subject to the commerce clause, although concededly transportation must take place as the result of such contracts. What is the distinction, he asks, between this case and that of a contract of sale of personal property to be transported from one State to another? The answer is, of course, that in Williams v. Fears. as in the case of insurance contracts, transportation is purely collateral to the contract; the subject of transportation is not the subject of the contract. Hence, although the transportation of the insurance policies and of the laborers is within the scope of the commerce clause, the contracts of insurance and for the performance of labor are not.

The original package doctrine Mr. Cooke characterizes as anomalous and absurd. "This seems," he says, "about as reasonable as to hold

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that an interstate passenger continues under the shelter of the commerce clause until, by a change from his traveling raiment, he has been commingled with the general mass of population."

As a test of the validity of congressional regulation of the conduct and liability of those engaged in commerce, Mr.Cooke presents the rule that such regulation must be "for the benefit of those enjoying the benefit of transportation within the scope of the commerce clause." Under this rule, the employers' liability acts passed by congress are invalid, as for the benefit of the employees only, and not directly affecting commerce at all.

Mr. Cooke rejects the distinction sought to be made between "matters of local interest" and "matters of national interest," and contends that in no case may commerce within the scope of the commerce clause properly be regulated by a State. It is true, he says, that state action may affect such commerce; but in every such case this is merely under authority of a State, not to regulate such commerce, but to exercise some reserved power. "Such reserved powers may be resolved into a few tolerably well-defined classes, so far as concerns their effect upon such commerce: (1) to establish and maintain means of transportation; (2) to control persons and property; (3) to regulate the conduct and liability of those engaged in transportation; to which may properly be added the power of taxation." As for corporations, Mr. Cooke's opinion is that the general power of the States to regulate their own corporations, and to regulate, even to the extent of exclusion, foreign corporations, should extend to the regulation of commerce within the scope of the commerce clause when engaged in by corporations. He recognizes, of course, as well established, the contrary rule, that the States have no greater control over such commerce when engaged in by corporations than when engaged in by individuals.

Mr. Cooke's view is that it should not be held within the power of a State to authorize the engaging in commerce within the scope of the commerce clause—so as, for instance, to enable a railroad corporation to extend its lines beyond the borders of the chartering State for interstate transportation, except through the comity of the neighboring State. Mr. Cooke's whole position upon the subject of corporations engaged in commerce within the scope of the commerce clause seems due to a fundamental misconception. He is right in holding that a State cannot authorize the engaging in such commerce; he fails to see that no such authority is necessary. A State can charter a corporation for any purpose; such a corporation can then, like an individual, engage in

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commerce within the scope of the commerce clause, subject only to restrictions by Congress.

Upon the subject of state control of persons and property, Mr. Cooke presents the view that "if the State has power to prohibit or otherwise regulate the production, sale, or use of property within its territory, it then follows, so far at least as necessary to a complete exercise of such power, that it is incidentally within the power of the State to regulate, even to the extent of prohibition, transportation thereof into, or it may be out of, the State." This view brings him into interesting conflict with the supreme court upon the subject of intoxicating liquors, which he thinks it is plainly, as in the case of other articles possessing deleterious qualities, within the power of the State to exclude. His argument upon this point is full and convincing. The Wilson act, assuming that the control it allows to the States is not otherwise within their powers, he denounces as an unconstitutional delegation of congressional power to the States.

As stated above, Mr. Cooke would limit the power of congress to regulate the conduct and liability of those engaged in transportation within the scope of the commerce clause to regulation for the benefit of those enjoying the benefit of such transportation. The power of the States he would limit to regulation for the benefit of the public, or of those enjoying the benefit of transportation wholly within the State; he would exclude State regulation solely for the benefit of those enjoying the benefit of transportation with the scope of the commerce clause. This view conflicts, of course, with the decisions sustaining such state action as requiring the stopping of trains for the benefit of interstate passengers only, or regulating liability for loss or injury suffered by those enjoying the benefit of interstate transportation.

Upon the question of the validity, so far as the commerce clause is concerned, of state taxation, as property, of property concerned in commerce within the scope of the commerce clause, Mr. Cooke presents the simple test of whether such property is within the territorial jurisdiction of the State. It being properly established that property is not exempt because employed in such transportation, he sees no reason to exempt property acquired through such transportation, i.e., the receipts or earnings. The contrary is, of course, established; yet in glaring inconsistency, says Mr. Cooke, with this rule, State taxation is sustained upon the capital stock or other valuation including the franchise value arising out of use in transportation within the scope of the commerce clause.

Upon the whole, Mr. Cooke's book is a valuable work, though it would

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have been more useful to attempt to find what underlying principles run through the cases as decided, than to state the author's personal views. Yet his free criticism is refreshing, and will no doubt, as he expresses the hope, "assist toward an ascertainment of the truth." Roughly speaking, Prentice and Egan may be characterized as a good pioneer treatise, Calvert as sticking too closely to a mere statement of the cases, Cooke as going to the other extreme. In a way, therefore, the three books supplement each other, and together prepare the way for a first-class treatise upon the law of the commerce clause.

KARL SINGEWALD.

Constitutional Government in the United States. By WOODROW WILSON. (New York: Columbia University Press. 1908. Pp. 236.)

This volume consists of a series of eight lectures delivered by President Woodrow Wilson at Columbia University in 1907 under the George Blumenthal foundation. In the prefatory note Dr. Wilson states that the lectures are not to be regarded as a systematic discussion of the government of the United States. The topics discussed in these lectures are Constitutional Goverment, the Place of the United States in the Development of Constitutional Government, the President, the House, the Senate, the Courts, the Relation of the States to the Federal Government, and Party Government.

Each of the lectures could be expanded into a good sized volume, so that one need not expect to find an exhaustive treatment of the topics discussed. They serve a very valuable purpose, however, in that one can here find in small compass a general outline of the character and operation of constitutional government as exhibited by the government of the United States. Dr. Wilson has succeeded in his purpose, for there is presented here the more salient features of constitutional government, and his analysis of the position of the United States in constitutional development is admirably done. He calls attention to a fact so often lost sight of that constitutional government does not mean merely a government conducted according to the provisions of a definite constitution, but that it is one "whose powers have been adopted to the interests of its people and to the maintenance of individual liberty." The contribution of the United States to constitutional government, according to Dr. Wilson, is the federal system, the system under which all power is not concentrated in the federal government, but under which all the

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ordinary relations of citizens to each other are intrusted to the several States which have their own constitutional governments. In the description of the functions and powers of the president, the senate, the house, and the courts, and the relations of the States to the federal government and party government, the lecturer has been clear and discriminating. To those who desire a description of the operation of the government of the United States in small compass, the volume should be very welcome.

H. E. FLACK.

United States Constitutional History and Law. By ALBERT H. PUTNEY. (Chicago: Illinois Book Exchange, 1908. 8vo, pp. 599.)

This work is one of a number which attempt, in a moderate sized volume, to cover the field occupied by Cooley's well known *Principles of Constitutional Law*. Mr. Putney gives a clear and generally accurate statement of the provisions of this law, but his book falls between two stools. It is too historical to be a pure law book and yet the historical portion is too slight and inadequate to make an adequate constitutional history. The arrangement is not always logical and the treatment of various parts of the government is unequal. The power over commerce is treated in chapter 12, while other congressional powers are discussed in Chapter 8. The book shows some signs of careless writing, as (p. 260) where it is stated that the power of the federal government over trademarks "is restricted in its application to interstate commerce." The chapters devoted to the history of England might well have been omitted, as the material therein contained is not very relevant, and the space might have been taken by a fuller discussion of American constitutional history. There is a certain amount of repetition due to the arrangement, thus "treaties" and "due process of law" are twice discussed. The proofreading is extremely careless; for example "abbott" is found four time on pages 199 to 201; the "Petition of Rights" (sic) is dated 1728, on page 364; and Governor Bulkeley of Connecticut is called Buckley on p. 478. In some places, the work is too journalistic, as in speaking, on p. 368, of President Roosevelt's "message to Congress at its last session." The index, which, by the way, is poorly constructed, gives the only reference to the District of Columbia as page 417, in the chapter dealing with "Acquisition of Territory and the Government of Territory Belonging to the United States." On that page we find a statement that the District has been considered in chapter 5; but we really find it in chapter 8, on page 267,

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under "The Seat of Government." The chapter on the judiciary is one of the best in the book and the work's chief value lies in its convenient reference to recent decisions. Longer quotations from the opinions of the courts are included than it is usual to find in legal text books. An appendix of about 100 page includes the great English and American constitutional documents and the full text of the interstate commerce act with its amendments up to date.

B. E. STEINER.

Primary Legislation: A Study of the History and Tendencies of Primary Election Legislation. By C. EDWARD MERRIAM. Chicago: The University of Chicago Press. 1908. Pp. xi, 308.)

Four chapters of this book are devoted to an historical summary of primary election legislation in the different States and one each to the judicial interpretation of these laws, the regulation of the convention system, the practical workings of the direct primary system, and a summary and conclusion. In the appendix, covering nearly half the book, may be found a brief summary of present primary election laws and a reprint of several laws in full. The New York law is given as the best representative of the legally regulated convention system, the Illinois law as a fair type of the direct primary, and the Florida law as typical of southern legislation, which leaves a great deal to the discretion of the party managers. A part of the Wisconsin law is given to show the combination of the system of nomination by petition only with the optional non-partisan primary.

One of the most important questions legislatures have had to deal with in primary legislation is the test of party allegiance. The most frequent test is that of past support and an intention to support the nominees at the ensuing election. In the southern States it is customary to allow the party managers to determine the qualifications of the voters and they generally apply the above test. However, this system is not altogether satisfactory as it may practically exclude from political activity citizens who believe in men more than in party. It may be that a man's general sympathies are with a certain party and that it has one candidate before the primary whom he would be glad to support, but there is another candidate with fair chances of election whom he considers a vicious man. If the citizen takes part in the primary in the hope of defeating the vicious candidate, he may find himself under obligation to support this man at the general election. To withdraw from the pri-

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mary and hold himself independent at the general election is not a satisfactory solution of the problem. A few of the States have attempted to abolish the party test, but their acts have been declared unconstitutional. The Wisconsin law secures absolute secrecy and allows the elector to vote for the candidates of either party, but not for both.

Other subjects dealt with by legislation are the date of the primary, proxies, the apportionment of delegates to conventions, the vote necessary for nomination, the unit rule (forbidding it in North Dakota), assessment of candidates for election expenses, and the convention. Professor Merriam thinks that the experience of Illinois condemns choice by a convention when no candidate receives a majority in the primary. He also thinks that "the public will accept the plurality system before it is reconciled to the complications of the preferential system." Wisconsin provides for the formation of the State platform by a candidates' convention, while several States allow the State central committee to act with the candidates in this work. Texas provides for the submission of questions of party policy to the voters on petition of 10 per cent of the party's voters. Professor Merriam favors the Wisconsin plan and thinks that the lack of a platform in local election a matter of no consequence, if there is no living issue of a local character.

After a careful consideration of the convention system the author reaches the conclusion that it is doomed. The great objection to the primary is that it emphasizes the national party in local elections. The best remedy Professor Merriam has to offer is the reduction of the number of elective offices. The people should choose all officers concerned with the formulation of public policies, but administrative work is not partisan and of the officers concerned in this work the people should choose directly only the chief ones, such as governor and mayor, and should impose upon them the duty of choosing and supervising the administrative officers. Instead of being undemocratic the author thinks that this would be a decided advance in democracy.

DAVID Y. THOMAS.

The Adoption of the Fourteenth Amendment. By HORACE EDGAR FLACK, Ph.D. (Baltimore: The Johns Hopkins Press. 1908. Pp. 279.)

The attention of our newspapers and magazines, and also of our public men in general, is now very much occupied by a consideration of the tendency towards centralization in our government, as shown by so-

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called "executive aggression," such acts of congress as the regulation of railroad rates and the pure-food law, and by various decisions of our federal courts during the last twenty-five years. On the one hand, we have the fear that the activities of our State and local governments will be absorbed by the national administration, and on the other, the claim of actual necessity and political expediency. We even hear discussion of "the limitations of federal government," and the assertion that these may prove a detriment when our country has been consolidated by a real community feeling and identity of interests. Hence, Dr. Flack's work is very timely in its appearance, for it is a record of the greatest attempt ever made in our history, to aggrandize the power of our national government in general, and of congress in particular, at the expense of the States. The object of the book is to examine and narrate the circumstances under which the fourteenth amendment was made and adopted, and "the desires and expectations of its framers and supporters" (Pref. p. 7).

The freedmen's bureau and civil rights bills are first considered. It is shown that although the republican party leaders claimed that both bills were constitutional, the former as a war measure and the latter under the second section of the thirteenth amendment, yet a vague fear that they might not be able to stand the test of the courts caused the reconstruction committee of congress to take in hand the introduction and passage of the fourteenth amendment.

Of this amendment, section 1 defines State and national citizenship, and prohibits the States from abridging the privileges and immunities of United States citizens, or depriving any person of the aid and protection of the laws. It is stated that the main purpose of this section was to "increase the power of the federal government very much, but to do it in such a way that the people would not understand the great changes intended to be wrought in the fundamental law of the land" (p. 69). The immediate objects were to make the first eight amendments binding upon the States, and to give undisputed validity to the civil rights bill. As regards section 2 (dealing with the basis of representation and with the disfranchisement of citizens), the "chief purpose was to weaken the power of the south, and so of the democratic party, and to keep the republican party in power" (p. 126). "The question of party, and not of right and justice, was given precedence" (p. 106).

The third section was intended not only to punish the southern leaders, but also to serve the political purpose of making it "easier for the party in power to continue in control of the government" (p. 128).

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The republican leaders inserted section 4, which guaranteed the public debt of the United States, with the evident design of strengthening the other sections and securing votes for the party.

Finally, section 5 was meant to strengthen the hands of congress and the national government at the expense of the States, by the gift of the "power to enforce, by appropriate legislation, the provisions of this article." Of course the question of just what would be "appropriate legislation" was not determined, and it was the evident intention of the radical leaders to extend the power of congress to the extreme limit of interpretation.

A thorough and comprehensive outline and analysis of the debates in congress over the adoption of the amendment is given, also of its discussion by the newspapers of the land, and its adoption by the legislatures of the various States, though it is seen that the debates during its consideration by the last-named bodies were often meager and unsatisfactory.

Furthermore, after the amendment was adopted "congress thought and declared, both by the debates and by the [later civil rights] bill itself, that it was given affirmative power of legislation by the fourteenth amendment" (p. 249). These activities of congress were cut short very soon by the decisions of the supreme court in the slaughter house cases in 1873.

The book gives a careful survey of the subject, and the author's conclusions are correct in the main. However, he fails to note that the influence of the old idea of the abolitionists, who felt that they were fighting for the fundamental principles of individual freedom and equality before the law, was just as potent in accomplishing the adoption of the amendment, as the more selfish aim of many of the radicals, who desired to keep their party in power, and themselves in office.

Perhaps the greatest fault of the work is that it goes too much into detail at times, for the long analysis and repetition of the discussion and debates prove wearying to the reader. An outline of the best discussion of the amendment in congress which was made by Senator J. M. Howard of Michigan and Representative John A. Bingham of Ohio (as the book abundantly proves), followed by a summary of the ideas of the other members, many of them of no particular consequence, would have been entirely sufficient for the purpose of the work.

The errors are few, and with one or two exceptions of little consequence. The statement on p. 233 that the supreme court of the United States "held that the first eight amendments were *not* limitations upon the power of the United States" is evidently the direct

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opposite to the facts, and to what was intended. It is easily corrected by the omission either of the word "not," or of the word "united." Mr. Blair was not senator from Maryland (p. 245) but from Missouri, and Mr. Thurman of Ohio never vice-president of the United States (p. 251). He was merely democratic candidate for that office in 1888. The most serious lapse in diction is on page 255, where we read that "the significant thing in his speech was what was the virtual statement that the first eight amendments were made applicable to the States by the fourteenth amendment."

W. STARR MYERS.

The American Executive and Executive Methods. By JOHN H. FINLEY and JOHN F. SANDERSON. (New York: The Century Company. 1908. Pp. 352.)

This volume, the last of the excellent American State Series, maintains in general the high standard of scholarship and clearness of expression that characterize the preceding volumes. As stated in a brief prefatory note, it was completed by President Finley with the coöperation of Mr. Sanderson. Their respective contributions, however, are not indicated, although the lawyer's method and point of view, evident in many ways, may show Mr. Sanderson's influence.

The general plan of treatment is as follows. Three brief chapters sketch the historical organization of executive power in the United States. In the first, the colonial governor is considered, and emphasis laid on the limitations placed on his authority. The second deals with State executives under the confederation, showing the attempts at separation of departments and the close connection between the powers of the new executives and those of the provincial governors, the suspensive veto being the most important new feature. Chapter iii deals with the method of choosing executive officials, contrasting the unified system of the federal government, where subordinates are controlled by a single head, with the distributed system of the States, where power of selection has been divided among the chief executive, the legislature and popular suffrage. From these historical chapters it is shown that the American executive derives its organization and powers from colonial precedents and that modifications have been, in the main, toward increasing executive authority and replacing legislative control by popular election.

Chapters on the relations of executive to judiciary and legislature indicate their separation in theory and their close connection in actual

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practice, each exercising powers which on strict analysis are shared by the others. This is further emphasized by separate chapters on the executive powers of veto and of pardon. The treatment of executive power of appointment and removal contains a mass of information, based largely on judicial decisions. Its condensation, arrangement and legal phraseology leave, however, a somewhat chaotic impression. A brief statement of the "administrative functions" of the executive, in "taking care that the laws be faithfully executed," is followed by a chapter on the authority of the executive to use force. The large powers of executives as commanders-in-chief of military and naval forces, especially in time of disturbance, and the American principle of subordinating military to civil authority are clearly brought out.

Chapters on the relations of State executives with one another and with the federal executive open up such questions as interstate extradition of fugitives from justice, controversies between two or more States, and the general relations of the States to the union. Particular attention is given to the concurrent State and federal jurisdiction over the militia and to the possibility of dispute as to the advisability of using federal troops to quell disturbances within a State. The treatment of State boards and commissions consists mainly of an enumeration of their different types with a brief statement of functions. Their part in actual government is not satisfactorily discussed. Four suggestive pages, entitled Executive Initiative in Legislation, referring, however, to State executives alone, show that the veto is no longer the only test of a governor's power, but that his policies, especially when supported by public opinion, exercise considerable influence, even against a hostile legislature.

Almost half the volume is given up to the organization and functions of the federal executive. The president's powers are satisfactorily stated, and the wide variations in the relations of executive to legislature possible under the constitution are indicated. The historical development of the cabinet, showing its relation to the president and to congress is fair, although the disadvantages, actual and potential, of the present system might be more strongly stated. A chapter on the civil service is especially valuable in showing the actual control which congress and the courts exert over administrative officials. The large war powers of the president and his authority in foreign relations, together with the attitude of senate and house to treaties occupy two chapters. In conclusion are discussed the machinery and detail of the various executive departments and the functions of commissions and boards which in

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many cases exercise powers both executive and judicial. The appendix contains a brief outline of the method of choosing presidential electors, the development of nominations and the counting of electoral votes.

While limitations necessitated by the size of the volume prevent detailed consideration of numerous important topics, the proportion in general is good and the method suggestive. It is, however, the legal organization and functions of the executive, rather than the actual working out of the system in practice that the authors have usually in mind. To one not familiar with American Administration in its every day working, the book may seem fragmentary and disconnected, a mass of information without fundamental unity. As one of a series, each of which supplements the others, aiming to describe "comprehensively the manner in which the Governmental agencies of the American State are organized and administered" this volume has considerable value.

RAYMOND G. GETTELL.

The Province of New Jersey, 1664–1738. By EDWIN P. TANNER, PH.D. (New York: Columbia University Studies in History, Economics and Public Law. Volume xxx. 1908. Pp. xvi, 712.)

The above work is a study of the political institutions of New Jersey during the period of executive union with New York. It is accurate and well written, and is a monument to the untiring patience and energy of its author, who has based his narrative on a close and exhaustive study of original sources.

Dr. Tanner followed the line of least resistance in his method of handling the material, for after several introductory chapters narrating the history of the colony from the grant to Berkeley and Cartaret (1664) to the transformation into a royal province (1702), he takes up separately its different institutions, i. e., the executive, legislature, judiciary, finance, militia, etc., and traces the growth and development of each one down to the final executive separation from New York in 1738. This causes a repetition of the same events, which are discussed time after time from a very slightly differing point of view. If the author had organized his material once and for all into a clear synthetic study of each event narrated, the seven hundred odd pages of the monograph could easily have been reduced by at least one-third, and the reader's time and attention have been correspondingly relieved.

To the student of political science, the main interest of the work will lie in the fact that this small primitive colony offers striking examples

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of tendencies shown in all government of a more or less democratic character. Thus, the general assembly which represented the people more directly, from the beginning fought for and finally won the initial right to levy taxes and make appropriations. During the whole period from 1702–1738 it steadily increased in power at the expense of the governor and of the royal council—the upper legislative house. Again, Bagehot, Dicey, Wilson and others have pointed out the fact that today the most successful governor-general of a self-governing colony is the one who, following the great example set by the crown in England, endeavors to rule by influence and not by direct assertion of authority. This was strikingly shown 200 years ago by the experience of the royal governors of New Jersey, who were usually successful only in so far as they followed the former method in their administration of the colony. Says Dr. Tanner: "Taking the part played by the governor in the work of legislation as a whole, our study shows that the office was respected by the legislative bodies, and . . . . when the post was held by men who sought the welfare of the province, they could obtain reasonable measures which did not run absolutely counter to colonial views. The extent of the directing influence possessed by the governor, on the other hand, depended upon his political skill and his ability in handling men" (p. 231). Of the seven governors discussed, Robert Hunter (1710–1719) was the most tactful and capable and also the most successful.

In spite of the criticism stated above, the work is a valuable and authoritative treatment of a period which has been described heretofore only by historians of "amateur" or "popular" ability. Dr. Tanner shows keen, accurate and scholarly judgment in his evaluation of historical evidence, and it is to be hoped that he will complete his task by a further work carrying the narrative at least to the outbreak of the Revolution.

WILLIAM STARR MYERS.

A Sovereign People: A Study of Swiss Democracy By HENRY DEMAREST LLOYD, edited by JOHN A. HOBSON. (New York: Doubleday, Page and Company. 1907. Pp. xvi, 273.)

The editor of this book undertook a difficult task. He was obliged to write a volume of commentary upon the life of a nation from notes taken by another hand. The memoranda were indeed very abundant, but the difficulty of entering into the spirit of the original observer was none the less great. Mr. Hobson has, however, succeeded so well that

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we wonder at times who is speaking. Occasional paragraphs of enthusiastic comment awaken a desire to know whether it be the voice of the editor or his friend. But this is idle curiosity, for the value of the book depends on the facts with which its arguments are sustained.

The work is not a complete description of administration in Switzerland, but justifies its title by considering those portions of the governmental framework in which the people come in immediate contact with public affairs. After a brief historical view of the growth of Swiss democracy there are chapters on the community, and on the "Landesgemeinde," or town meeting plan of state government. The greater number of cantons follow the representative system, but the author describes the various checks employed to control legislative bodies. In all but one of the states there is to be found some form of referendum or initiative. The extension of direct legislation to the federal government is of more recent origin and the subject, consequently, gives rise to speculation as to how far this will go and how profitable has been the experience. In summing up the matter in a later chapter the author is of the opinion that the referendum and initiative have been very beneficial in Swiss politics. They have proved to be conservative in legislation and have abolished the political machine in administration. A study of the statute book shows that only a small per cent of proposed laws have been rejected, and that the popular vote does not prove to be an extinguisher of representative deliberation and initiative.

In view of this close control of legislation by the people, the management of public utilities assumes a different aspect from that found in monarchical countries. The nationalization of railroads in Switzerland took place as the result of a popular vote, following a previous experiment with the monopoly of the manufacture of alcohol. The latter measure has had no marked effect on the drink habit, but is a great financial success. Hence, perhaps, the cheerfulness with which the federal ownership of railways was approved, but back of it all lies the historic fact that for centuries states and communities have been accustomed to some form of public property. A chapter on municipal ownership gives the recent situation in regard to street railways, water, light, and other public utilities.

So much has been accomplished for democracy that socialism in Switzerland does not assume the extreme radical tendencies found in some other countries. Since results must in the end be obtained through the people rather than the politicians, the socialistic societies devote themselves to campaigns of education, and since the country is popu-

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lated with small property owners, a revolutionary socialism would be rejected with horror. Capitalism has not made itself oppressively felt because there are no great opportunities for the exploitation of the public. There are no deposits of coal or iron, and transportation is owned by the state. Forests and water power are carefully supervised and the chances for private monopoly are minute. The political outlook therefore seems bright.

The author approached his subject as a thorough believer in democracy, and consequently found himself in sympathy with Swiss institutions, but the facts are so marshalled and his opinions are for the most part so temperately expressed that the argument for wider extension of direct democracy commands respect.

J. M. VINCENT.

ESSAI SUR L'HISTOIRE DES DOCTRINES DU CONTRAT SOCIAL. By FREDERIC ATGER. (Nîmes: Imprimerie Cooperative "La Laborieuse." 1906. Pp. 432.)

This work is almost spoiled by the exceedingly poor typographical workmanship. Two pages are taken up with "errata" and even then only a few of the numerous errors are corrected. It is to be regretted that in a work of merit, which this certainly is, the author should not have employed a better printer.

About one quarter of the treatise is taken up with the history of the theories of the social contract in antiquity and the middle ages. The balance of the work is devoted to a history of them from the sixteenth century to the present day. For this later period the author is able to go into considerable detail concerning the political and social conditions of the countries of Europe and to show how these conditions encouraged the spread of the theories of the social contract.

He does not, however, attempt to enumerate and describe all the writings in which the theory of the social contract is to be found. Any critic will find that certain works are not mentioned which might be included, but in general the selection of authors to be treated is well made and the treatises fully described. Though a little diffuse in certain portions the book is an excellent compendium of information along the line with which it deals in the field of political theory. Numerous quotations are given in support of the author's statements, but in no sense has he brought to light any new material or even presented it in a new fashion.

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The method of treatment is too chronological. After the first chapter on the social contract in antiquity and the second on the middle ages the following chapters are given over to separate centuries. There is not enough of an attempt by the author to show the influence of one publicist on another.

About Rousseau and the theorists of the eighteenth century he goes into the greatest of detail and brings his subject down to the immediate present by the consideration of works by Fouillée, Léon Bourgeois, and of other juristic, socialistic and anarchistic writers of the present. It is in this last portion of the work that its greatest value lies, especially because of the large amount of space given to French writers. Aside from this Gierke's *Genossenschaftsrecht* will continue to stand as the definitive work on the history of the contract theory of the state as well as of the history of the general subject of contractual relations.

JAMES SULLIVAN.

A History of the English Agricultural Laborer. By Dr. W. HASBACH. Newly edited by the author and translated by RUTH KENYON. With a preface by SIDNEY WEBB, LL.B. (London: P. S. King and Son. Pp. xvi, 470.)

Dr. Hasbach's *History of the Agricultural Laborer* is more than an economic study, although its value in this respect is undoubted. It is, however, still more valuable as a contribution to political science; for it is the condition of the agricultural laborer as produced by legislation that is the theme of Dr. Hasbach's monograph. The early history of the English peasantry is passed over very lightly, and, in fact, it is clear that Dr. Hasbach has not made any exhaustive study of the manorial system in England. The real subject of Dr. Hasbach's search is the transition from a rural population attached to the land, and having rights in the soil, to an agricultural proletariat which took place in England as a consequence of the enclosure of commons and wastes and the deprivation of the agricultural population of all share in the land. This movement which took place in the later half of the eighteenth century and the first half of the nineteenth, was undoubtedly largely economic, and was due, as Dr. Hasbach points out, to the change in the character of agriculture, the introduction of more diversified crops and of machinery and more modern methods of farming; but these causes would not have made the enormous change in the position of the rural inhabi-

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tants of England, had it not been for the legislation which was passed in obedience to the theories of the economists Adam Smith, Arthur Young, Arbuthnot and Malthus. The proposition from which these economists started Dr. Hasbach quotes from Arbuthnot who, besides being an economist and writer, was himself a large farmer. "If by converting the little farmers into a body of men who must work for others, more labor is produced," wrote Arbuthnot, "it is an advantage for which the nation should wish." The proletarian forces demanded, according to the theories of the economists of the eighteenth century, in order to obtain the greatest net returns from the land, were created by means of the enclosure acts and the poor laws, and the terrible consequences of this deliberate degradation of a large section of the nation in obedience to a supposed necessity for a greater bulk of production are traced by Dr. Hasbach through the whole of the nineteenth century. He indicates what attempts have been made to undo by legislation the disastrous effects that had been produced by law, and also the small accomplishment as yet of attempted remedial legislation. The story is brought up to 1906, but does not cover the two latest attempts of the liberal government to cope with rural depopulation and misery—the small holdings act of 1907 and the old age pensions act of 1908.

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INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS

ADMINISTRATIVE LAW

Books

Diccionario administrativo. Vol. I. Letter A. Madrid: Gaceta Administrativa. 1908. Pp.1 386, vi.

Kunze, F. Die Verwaltungstreitverfahren. Berlin: Guttentag. 1908.

Langhard, J. Die politische Polizei der schweizerischen Eidgenossenschaft. Bern: Stämpfli, 1909. Pp. iv, 370.

Lenting, L. E. Schets van het Nederlandsch staatsbestuur en dat der overzeesche bezittingen. 7th ed. by H. J. Romeijn. Part 1. The Hague: Cleef. 1908.

Loppin, P. Le self-government local en France. Paris: Pedone. 1909. Pp. 132.

Lumley. Public health. 2d ed. London: Butterworth. 1908. 2 vols.

Moreau Félix. Manuel de droit administratif. Paris: Fontemoing. 1908.

Müller, O. St. Gallisches Verwaltungs-Recht. 2. Bd. Sammlung grundsätzl. Entscheidungen aus dem Gebiete des Staats-und Verwaltungsrechtes, 1897–1908. St. Gallen: Köppel. 1908. Pp. xii, 565.

Scholefield, J. Encyclopædia of local government law. Vol. vii. London: Butterworth. 1908. Pp. xxxvi, 607.

COLONIES

Books

Bonnefoy-Sibour, A. Le pouvoir legislatif aux colonies, essai historique sur le droit de légiférer en matière coloniale. Dijon: 1908. Pp. 309.

Cayla, L. Les offices coloniaux. Paris: 1908.

Chiesi, G. La colonizzazione europea nell' Est Africa: Italia, Inghilterra, Germania. Torino, 1908. Pp. 814.

Errera, P. Le Congo belge. Paris: Giard et Brière. 1909.

Herrfurth, K. Fürst Bismark und die Kolonialpolitik. Berlin: 1908. Pp. xii, 439.

Jerusalem, F. W. Grundsätze des französischen Kolonialrechts. Berlin: Guttentag. 1909. Pp. xiii, 182.

Martin, P. Le budget colonial. Bordeaux: Y. Cadoret. 1908. Pp. 392.

Seidel, A. Deutschlands Kolonien. Koloniales Lesebuch für Schule und Haus. 2d ed. Berlin: 1908. Pp. xii, 296.

Swaw, T. La France à Madagascar. Histoire politique et religieuse d'une colonisation. Paris: 1908.

Swettenham, Sir Frank. British Malay. An account of the origin and progress of British influence in Malaya. New ed. London: Lane. 1909. Pp. 366.

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ELECTRONIC REPRODUCTION PROHIBITED

Articles in Periodicals

Africa. L'Angleterre en Afrique. *E. de Renty.* Ques. Dip. et Col. March 1.

Egypt. Les intérêts francais en Égypte. *E. Brunet.* Ques. Dip. et Col. December 16.

India. England's Problem in India. *T. H. Boggs.* Yale Rev. February.

Philippines. Problem of the Chinese in the Philippines. *R. M. Story.* Am. Pol. Sci. Rev. February.

CONSTITUTIONAL LAW

Books

Andrassy, Count Julius. The development of Hungarian constitutional liberty. London: Kegan Paul. 1909.

Auffray, Jean. Étude sur la facilité de la révision de notre constitution de 1875. Rennes. 1908. Pp. 123.

Beecher, Franklin A. The annotated constitution of Michigan. Detroit: 1909. Pp. xxi, 158.

Belot, C. Le pouvoir exécutif sous le gouvernement de M. Thiers. Dijon: Barbier et Marchal. 1908. Pp. 263.

Below, G. v. Das parlamentarische Wahlrecht in Deutschland. Berlin: Curtius. 1909. Pp. vii, 170.

Bollman, J. Verfassung und Verwaltung der freien Hansastadt Bremen. Hanover: Jänecke. 1909.

Brassloff, S. Leitfaden der österreichischen Verfassungsurkunde. Vienna: C. Fromme. 1909.

Browne, E. G. A brief narrative of recent events in Persia. Followed by an appendix on the Persian Constitution. London: Luzac. 1909. Pp. 101.

Bruck, E. Das Verfassungs- und Verwaltungsrecht von Elsass-Lothringen. Vol. ii. Strassburg: Trübner, 1909. Pp. viii, 287.

Bruckner, W. Staats- und Verwaltungsrecht der freien und Hansestadt Lübeck. Hanover: Jänecke. 1909.

Battaini, D. Lo stato contro la chiesa: le origini della crisi, la soluzione. Torino: Bocca. 1908. Pp. 352.

Combothecra, X. S. Monographies de droit public. Paris: Larose et Tenin. 1909. Pp. 260.

Daish, John B. Procedure in Interstate Commerce cases. Washingon: W. H. Lowdermilk. 1909. Pp. xiv, 494.

Doucet, R. La constitution ottomane. Texte et notice historique. Paris: Giard et Brière. 1908.

Drinker, Henry S. Interstate Commerce act. Philadelphia: Bisel. 1909. 2 vols.

Ewing, E. W. R. Legal and historical status of the Dred Scott decision. Washington: Cobden Publishing Co. 1909. Pp. 228.

Frankenberg, H. v. Staats- und Verwaltungsrecht des Herzogtums Braunchweig. Hanover: Jänecke. 1909.

Geigel, R. Die Trennung von Staat und Kirche in Frankreich. Münich: Schweizer. 1908. Pp. iv, 94.

Guhl, Theo. Bundesgesetz, Bundesbeschluss und Verordnung nach schweizerischen Staatsrecht. Basel. 1908. Pp. 111.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hässelbarth. Staats- und Verwaltungsrecht des Herzogtums Sachsen-Altenburg. Hanover: Jänecke. 1909.

Hall, H. R. Governors and governing mechanism. 2d ed. London: Technical Publishing Co. 1908. Pp. 188.

Hatschek, J. Das Interpellationsrecht in Rahmen der modernen Ministerverantwortlichkeit. Leipzig: Göschen. 1909. Pp. 164.

Hatschek, J. Allgemeines Staatsrecht. 3 Bde. Leipzig: G. J. Göschen. 1908.

Keith, A. B. Responsible government in the Dominions. London: Stevens & Son. 1909. Pp. 303.

Knetsch, A. Staats- und Verwaltungsrecht des Grossherzogtums Sachsen-Weimar-Eisenach. Hanover: Jänecke. 1909.

Kolmer, G. Parlament und Verfassung in Österreich. 5 Bd. 1891–1895. Vienna: C. Fromme. 1909. Pp. xvi, 552.

Kraelitz-Greifenhorst, F. v. Die Verfassungsgesetze des Osmanischen Reiches. Leipzig: R. Haupt. 1909. Pp. 59.

Langbein, A. Staats- und Verwaltungsrecht des Fürstentums Schwarzburg-Sondershausen. Hanover: Jänecke. 1909.

Leser, Guido. Untersuchungen über das Wahlprüfungsrecht des deutschen Reichstags. Leipzig: Duncker & Humblot. 1908. Pp. xvi, 148 (Staats- und Völkerrechtlichen Abhandlungen, Bd. vii, Heft 2.)

McKechnie, W. S. The reform of the House of Lords. Glasgow: MacLehose. 1909. Pp. 136.

Marmorek, S. L'Obstruction au Parlement autrichien. Paris: Pedone. 1908. Pp. 134.

Matzen, H. Den danske Statsforfatningsret. Anden Del. Fjerde gjennemsete Udgave. Copenhagen: 1908. Pp. 368.

Meyer, A. De l'indemnité parlementaire. Paris: Giard et Brière. 1908. Pp. 178.

Molina Fernandez-Moreno, I. de. Manuel de leyes electorales. 3d ed. Cuenza: 1908. Pp. 266, ix.

Moreau, Félix. Précis élémentaire de droit constitutionnel. 6th ed. Paris: Larose et Tenin. 1908. Pp. 580.

Muel, L. Les ministères de la troisième République, de 1870 à nos jours; leur composition, leur durée et les causes de leur chute ou démission. Paris: Pedone. 1908.

Nelson, John H. The law relating to the Interstate Commerce Commission, the Sherman anti-trust act, and the Bureau of Corporations. New York: Banks. 1908. Pp. xxii, 430.

Oberländer, O. Staats- und Verwaltungsrecht des Herzogtums Sachsen-Meiningen. Hanover: Jänecke, 1909.

Perego, L. La separazione della chiesa dallo stato e la riforma laica in Francia. Verona. 1908. Pp. viii, 378.

Petit-Dutaillis, C. E. Studies and notes supplementary to Stubbs' Constitutional History. Translated by W. E. Rhodes. Oxford University Press. 1908. Pp. xv, 152.

Powell, Ellis T. The essentials of self-government (England and Wales.) London: Longmans. 1909. Pp. 318.

Rontin, M. L'Élection des juges. Paris: Giard et Brière. 1908. Pp. 258.

Sadek, M. La constitution de l'Egypte. Paris: Giard et Brière. 1908. Pp. 224.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Schlotter, Paul. Staats- und Verwaltungsrecht der Fürstentumer Reuss älterer Linie und Reuss jüngerer Linie. Hanover: Jänecke. 1909.

Schollenberger, J. Staats- und Verwaltungsrecht der Schweiz. Hanover: Jänecke, 1909.

Schubart, P. Die Verfassung und Verwaltung des Deutschen Reiches und des Preussischen Staates. Breslau: Korn. 1909. Pp. iv, 217, 42.

Schwartz, H. Staats- und Verwaltungsrecht des Fürstentums Schwarzburg-Rudolstadt. Hanover: Jänecke. 1909.

Sutner. Staats- und Verwaltungsrecht des Königreichs Bayern. Hanover: Jänecke. 1909.

Sybenga, T. De grondwet van 1888 toegelicht, ook in verband met de praktijk. 4th ed. The Hague. 1909. Pp. viii, 440.

Veron, R. Des developpments du gouvernement de cabinet en Angleterre dans les dernières années du xix e siècle. Poitiers. 1908. Pp. vii, 118.

Walz, Ernst. Das Staatsrecht das Grossherzogtums Baden. Tubingen: J. C. B. Mohr. Pp. xii, 512. (Das öffentliche Recht der Gegenwart. 5 Bd.)

Zenker, Ernst V. Kirche und Staat unter besonderer Berücksichtigung der Verhältnisse in Osterreich. Vienna: Hartleben. 1909. Pp. xii, 211.

Articles in Periodicals

Aliens. Aliens Under the Federal Laws of the United States: 1. Alienage and Citizenship. *S. MacClintock.* Ill. L. Rev. March.

Aliens. Aliens Under the Federal Laws of the United States. II. Federal Legislation: Shipping, Patents, Trademarks and Copyrights. *S. MacClintock.* Ill. L. Rev. April.

England. The Government of England. *A. Johnson.* Yale Rev. February.

Freedom of Press. The Judicial Destruction of Freedom of the Press. *T. Schroeder.* Alb. L. Jr. November.

Hepburn Act. The Commodities Clause and the Fifth Amendment. *L. Hand.* Harv. L. Rev. February.

Hepburn Act. Court Review of the Orders of the Interstate Commerce Commission Under the Hepburn Act. *C. A. Prouty.* Yale L. Jr. March.

Medical Legislation. Characteristics and Constitutionality of Medical Legislation. *H. B. Hutchins.* Mich. L. Rev. February.

Personal Rights. The Decay of Personal Rights and Guarantees. *R. E. Byrd.* Yale L. Jr. February.

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Suits against United States. Origin and Development of Legal Recourse Against the Government in the United States. *C. C. Binney.* Pa. L. Rev. and Am. L. Reg. March.

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INTERNATIONAL LAW AND DIPLOMACY

Books

Bézos, P. L'Extradition en Italie. Paris: Giard et Brière. 1908. Pp. 175.

Boidin, Paul. Les lois de la guerre et les deux conférences de La Haye. Paris: Pedone. 1908. Pp. 282.

Bokanowski, M. Les commissions internationales d'enquête. Paris: Pedone. 1908. Pp. iv, 138.

Balch, Thomas Willing. L'Évolution de l'arbitrage international. Philadelphia: Allen, Lane and Scott. 1908. Pp. 122.

Carpentier, A. Recueil des traités, conventions, et déclaration de droit international 13th ed. Paris: Marchal et Billard. 1908.

Dicey, A. V. Conflict of Laws. 2d ed. London: Stevens & Sons. 1908.

Dumas, A. Étude sur le jugement des prises maritimes en France jusqu'à la suppression de l'office d'amiral (1627). Paris: Larose. 1908. Pp. 362.

Dupuis, Ch. Le principe d' équilibre et le concert européen. Paris: Perrin. 1909. Pp. 525.

Ernst, A. L'œuvre de la deuxieme conference de la paix. Brussels: Misch and Thron. 1908. Pp. ii, 175, iii.

Fauchille, P. et Politis, N. Manuel de la Croix-Rouge, à l'usage des militaires de terre et de mer et des sociétés de secours aux blessés. Paris. 1908. Pp. ix, 195.

Foignet, R. Manuel élémentaire de droit international public. 6th ed. Paris: Thevenot. 1908. Pp. 405, xxvii.

Fried, A. H. Die Grundlagen des revolutionären Pacifismus. Tubingen: J. C. B. Mohr. 1908. Pp. iii, 68.

Fried, A. H. Das internationale Leben der Gegenwart. Leipzig: Teubner. 1908. Pp. viii, 111.

Kirnberger, R. Die mazedonische Frage. Berlin: Walther. 1908. Pp. 112.

Lameire, I. Traité théorique et pratique de la conquête dans l'ancien droit. (Étude de droit international ancien.) Paris: Rousseau. 1908. Pp. xv, 784.

Latifi, Alma. Effects of war on property. Being studies in international law and policy. With a note on belligerent rights at sea, by John Westlake. London: Macmillan, 1909. Pp. 168.

Lozé, M. La question des détroits; étude juridique sur la situation internationale du Bosphore et des Dardanelles. Paris: Larose. 1908. Pp. 131.

Mandelstam, André. La justice ottomane dans ses rapports avec les puissances étrangères. Paris: Pedone. 1908.

Marriott, J. A. R. The remaking of modern Europe. 1789–1878. London: Methuen. Pp. 286.

Quaritsch. Kompendium des europaeischen Voelkerrechts. Berlin: W. Weber. 1908 Pp. iv, 182.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Richet, C. Die Vergangenheit des Krieges und die Zukunft des Friedens. Uebersetzung von Bertha v. Suttner. Leipzig: H. Haessel. 1909. Pp. xii, 355.

Satow, E. M. An Austrian diplomatist in the fifties. New York: G. P. Putnam's Sons. 1908. Pp. 59.

Schmoll, F. Zur Vorgeschichte und Geschichte der Auflösung der Schwedisch-norwegischen Union. Berlin: W. Pilz. 1908. Pp. 70.

Van Dyne, Frederick. Our foreign service: The "A B C" of American diplomacy. Rochester: Lawyers' Coöperative Publishing Co. 1908. Pp. ix, 316.

Weale, B. S. Putnam. The coming struggle in Eastern Asia. London: Macmillan. 1909. Pp. 684.

Weiss, A. Manuel de droit international privé. 6th ed. Paris: Larose et Tenin. 1909. Pp. xxviii, 718.

Articles in Periodicals

Bosnia. L'annexion de la Bosnie-Herzégovine au parlement autrichien. *G. Louis-Jaray.* Ques. Dip. et Col. February 1.

Bosnia. La Bosnie et l'Herzégovine devant la future conférence. *C. Printa.* Ques. Dip. et Col. February 1–February 16.

Haiti. Le problème de Haiti. *H. Marchand.* Ques. Dip. et Col. February 16.

International Law. The Present State of International Law. *W. R. Claxton.* Alb. L. Jr. December.

International Law. The Evolution of International Law. *J. W. Foster.* Yale L. Jr. January.

International Law. Les États-Unis et le droit des gens. *E. Nys.* Rev. de Droit Int. et Leg. Comp. 1909, no. 1.

Italy. L'Italie et la crise orientale. *E. Lémonon.* Ques. Dip. et Col. March 1.

Morocco. La police marocaine et la frontière algérienne. *J. H. Franklin.* Ques. Dip. et Col. January 16.

Morocco. North African Question and its relation to European Politics. *G. F. Andrews.* Am. Pol. Sci. Rev. February.

Pacific Blockade. Pacific Blockade. *J. Westlake.* Law Quar. Rev. January.

Prize. La Cour internationale de prises. *F. D. Curtius.* Rev. de Droit Int. et Leg. Comp. 1909. no. 1.

Roumania. L'attitude de la Roumanie dans la crise orientale. *J. Dorobantz.* Ques. Dip. et Col. January 16.

Venezuela. Our Controversy with Venezuela. *R. C. Morris.* Yale L. Jr. February.

JURISPRUDENCE

Books

Bartholdy, A. Mendelssohn. Das Imperium des Richters. Ein Versuch kausistischer Darstellung nach dem englischen Rechtsleben im Jahre 1906–7. Strassburg: Trübner. 1908. Pp xi, 236.

Foignet, R. Manuel élémentaire de droit romain. Paris: A. Rousseau. 1909. Pp. xxxiii, 320.

Folkard, H. C. A concise abridgment of the law. 2d ed. London: E. Wilson. 1908.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Gross, Charles. Select cases concerning the law merchant. Vol I. Edited for the Selden Society. London: Bernard Quaritch. 1908.

Holdsworth, W. S. A History of English law. Vols. II and III. Boston: Little, Brown and company. 1909.

Kohler, Joseph. Lehrbuch der Rechtsphilosophie. Berlin: Rothschild. 1909. pp. vi, 219.

Launspach, C. W. L. State and family in early Rome. London: George Bell and Sons. 1908.

Le Fur, L. La souveraineté et le droit. Paris: Giard et Brière. 1908.

Oppenheimer, H. The criminal responsibility of lunatics. A study in comparative law. London: Sweet and Maxwell. 1909. Pp. 275.

Perozzi, S. Istituzioni di diritto romano. Vol. II. Firenze: Barbèra. 1908. Pp. 605.

Warren, Charles. History of the Harvard Law School and of early legal conditions in America. New York: Lewis Publishing Company. 1908. 3 vols.

Articles in Periodicals

Crime. The Punishment of Crime. *C. N. Johnson.* Jurid. Rev. January.

French Judiciary. The French Judicial System. *J. G. Rosengarten.* Pa. L. Rev. and Am. L. Reg. February.

Jurisprudence. The Science of Jurisprudence. *H. Taylor.* Harv. L. Rev. February.

Justice. Law and Justice. *H. S. Hopper.* Alb. L. Jr. December.

Law Reform. A Legislative Program of Law Reform. *N. W. MacChesney.* Ill. L. Rev. March.

Legal Delay. The Delays of the Law. *W. H. Taft.* Alb. L. Jr. October.

Law Reform. The Progress of Law Reform in New York. *R. H. Arnot.* Am. L. Rev. January–February.

Legal Education. Jurisprudence and Legal Education. *W. J. Brown.* Col. L. Rev. March.

Liberia. Anglo-Saxon Law in Liberia. *A. W. Spencer.* Green Bag. January.

Turkey. The Legal System of Turkey. *A. Bertram.* Law Quar. Rev. January.

MUNICIPAL ADMINISTRATION

Books

Antoni, G. Städteordnung für die Prov. Hessen-Nassau vom 4. viii. 1897. 2d ed. Marburg. 1908. Pp. viii, 296.

Biddaer, P. La loi communale coordonnée et commentée. 2d éd. Brussels: J. Janssens. 1908. Pp. 590.

Bonneau, Georges. Manuel pratique des maires et des conseillers municipaux. Paris: Riviere. 1908.

Boston Finance Commission. Final reports, January, 1909. [Boston.] Pp. 130.

Boyer-Montégut, R. de. Étude sur l'administration d'une commune rurale. Toulouse: A. Gay. 1908. Pp. 69.

Deming, Horace E. The Government of American Cities: A program of democracy. New York: G. P. Putnam's Sons. 1909. Pp. ix, 323.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Doering, E. F. Studien zur Verfassungsgeschichte von Leicester. Ein Beitrag zur Geschichte Englischen Stadtverfassungen bis in die Zeit König Edwards I. Hanau. 1908. Pp. iii, 79.

Gemeindelexikon für das Königreich Preussen. 3 und 4 Hefte. Berlin: Königl. statist. Landesamt. 1908–09.

Griolet, G., Verge, Ch., et *Bourdeaux, H.* Code du conseiller municipal, ou code administratif. Paris: Libraire de la Jurisprudence Dalloz. 1908. Pp. ii, 552, 30.

Kooiman, D. Handboek voor de boefening van de praktijk der gemeente-administratie. Sneek: van Druten. 1908. Pp. 12, 695.

Municipal Year Book. 1909. London E. Lloyd.

Munro, William Bennett. The government of European cities. New York: The Macmillan Company. 1909. Pp. ix, 409.

National Municipal League. Proceedings of the Pittsburgh conference for good city government and the fourteenth annual meeting of the National Municipal League. [Philadelpha, 1909.] Pp. vi, 480.

New York City. Report of the joint committee of the senate and assembly of the state of New York appointed to investigate the finances of New York City. Albany: J. B. Lyon. 1909. Pp. 174.

New York City. Report of the New York Charter Revision Commission to the Legislature. [Albany] 1909. Pp. 179.

Page, William H. and *Jones, Paul.* Treatise on the law of taxation by local and special assessments. Cincinnati: W. H. Anderson. 1909. 2 vols.

San Francisco. Charter of the city and county of San Francisco. San Francisco: Carlisle and Company 1908. Pp. 3, 206.

Ullrich, A. Sammlung der Polizei-Verordnungen und Orts-Statute fur die Städte Hannover. Hanover: W. Otto. 1908. Pp. 1112.

Verein für Socialpolitik. Schriften. 128. Bd. Gemeindebetriebe. 129. Bd. Die Gemeindebetriebe Münchens. Leipzig: Duncker and Humblot. 1908.

Wood, A. E., and *Johnson, T. R.* Encyclopedia of local government requirements and practice. London: Butterworth and Company. 1908. 2 vols.

POLITICAL THEORY

Books

Raggi, A. La teoria della sovranità. Genova: Donath. 1908. Pp. vi, 302.

Zoccoli, H. Die Anarchie, ihre Verkünder, ihre Ideen, ihre Taten. Aus dem Ital. v. Siegfr. Nacht. Leipzig: Maas und von Suchtelen. 1909. Pp. xix, 616.

MISCELLANEOUS

Books

Allen, William H. Civics and health. Boston: Ginn and Company. 1909. Pp. xi, 411.

Bénes, Edward. Le problème autrichien et la question tchèque, étude sur les luttes politiques des nationalités slaves en Autriche. Paris: Giard et Brière. 1908. Pp. 312.

Bérard, Victor. La revolution Turque. Paris: A. Colin. 1909. Pp. 352.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Bosanquet, Helen. The Poor Law Report of 1909. A summary explaining the defects of the present system and the principal recommendations of the commission, so far as relates to England and Wales. London: Macmillan. 1909. Pp. 272.

Buisson, F. La politique radicale, étude sur les doctrines du parti radical et radical-socialiste. Paris: Giard et Brière. 1908. Pp. vii, 454.

Cockburn, A. P. Political Annals of Canada. London. 1909. Pp. 574.

Darmstaedter, Paul. Die Vereingten Staaten von Amerika. Ihre polit., wirtschaftl. und soziale Entwickelung. Leipzig: Quelle und Meyer, 1909. Pp. vii, 246.

Dealey, J. Q. The Development of the State. New York: Silver, Burdett and Company. 1909. Pp. 343.

Driault, E. Le monde actuel. Tableau politique et économique. Paris: Alcan. 1909. Pp. 376.

Evans, D. Owen. Old age pensions act, 1908. London: Sweet and Maxwell. 1908.

Foltz, E. B. K. The federal civil service as a career. New York: G. P. Putnam's Sons. 1909.

Guionin, H. Étude sur le Coroner anglais. Paris: Rousseau. 1908. Pp. 237.

Henderson, Charles R. Industrial insurance in the United States. Chicago: University of Chicago Press. 1909. Pp. 429.

Joyce, Joseph A. Franchises, especially those of public service corporations. Chicago: Callaghan. 1909. Pp. 850.

Langhard, J. Die anarchistische Bewegung in der Schweiz von ihrer Anfängen bis zur Gegenwart. 2d ed. Bern: Stämpfli. 1909. Pp. viii, 492.

Lewis, Frank W. State insurance: a social and industrial need. Boston: Houghton, Mifflin. 1909. Pp. 233.

Michelis, Eduard. Die Zolltrennung Österreich-Ungarns in handelspolitische und wirtschaftlicher Beleuchtung. Vienna: Manz. 1908. Pp. vii, 125.

Mody, H. P. The political future of India. A study of the aspirations of educated Indians. London: Hodder. 1909. Pp. 328.

Norman, Henry. Real Japan: Studies of contemporary Japanese manners, morals, administration, and politics. New ed. New York: Scribner, 1909. Pp. 364.

Pollard, A. F. The British Empire: Its past, its present and its future. London: League of the Empire. 1909. Pp. 864.

Powell, B. H. Baden-. The origin and growth of village communities in India. 2d ed. London: Sonnenschein. 1908. Pp. 164.

Reinsch, Paul S. The young citizen's reader. Boston: Sanborn and Company 1909. Pp. 10, 258.

Spinelli, N. The political life of Edmund Burke. Turin: Levi. 1908. Pp. 111.

Stephen, Reginald. Democracy and character. London: Williams and Norgate. 1908. Pp. xiv, 211.

Stourm, R. Le Budget. 6th ed. Paris: Alcan. 1909. Pp. xv, 623.

Viator, Scotus. Racial problems in Hungary. London: Constable. 1909.

Webb, Sidney and Beatrice. The break-up of the poor law; the public organization of the labor market. Parts one and two of the minority report of the Poor Law Commission. London: Longmans, Green and Company. 1909. 2 vols.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Articles in Periodicals

Alsace-Lorraine. L'Alsace-Lorraine en 1908. *P. Braun.* Ques. Dip. et Col. March 1.

Committee Government. Government by Committees in England. *F. Pollock.* Law Quar. Rev. January.

Hungary. Le Suffrage universel en Hongrie. *G. Louis-Jaray.* Ques. Dip. et Col. February 16.

Indians. The Indian Before the Law. I. F. Russell. Yale L. Jr. March.

Poland. Les Allemands dans le royaume de Polonge. *R. Henry.* Ques. Dip. et Col. February 1.

Political Science. Relations of Political Science to History and to Practice. *J. Bryce.* Am. Pol. Sci. Rev. February.

Race Distinctions. Race Distinctions in American Law. *G. T. Stephenson.* Am. L. Rev. January–February.

Spain. La situation politique et financière de l'Espagne. *A. Marvaud.* Ques. Dip. et Col. December 16.

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Hind's precedents of the House of representatives, by Asher C. Hinds. 8v.

Immigration, Annual report of the commissioner-general of, for the fiscal year 1908. 236 pp., Charts. *Bureau of immigration and naturalization.* Paper, 25c.

International arbitration, List of references on. 1908. 151 pp. *Library of congress.* Paper, 20c.

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Message to congress at the beginning of the 2d session of the 60th congress. 1908. 1,44,3 pp., illus. *President.* Paper, 15c.

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Panama Canal, Special message, Dec. 15, 1908. 23 pp. *President.* (H. doc. 1213.) Paper, 5c.

CANADA

Labour, Report of the Department of, 1907–8. Ottawa, 1908. 408 pp. (No. 36–1909.)

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Asiatic grievances, Report of the select committee on. 1908. xvi, 121, viii pp. *House of assembly*.

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Labour in the Island of Ceylon, Report of the commission appointed by His Excellency the Governor to inquire into and report upon certain questions connected with. Colombo, 1908. xxvi, 671 pp.

COLOMBIA

Conferencia de la paz de La Haya (reunida en 1907), Informes y Notas de la delegación de Colombia en segunda. Rotterdam, 1908. 2 l., 178 pp.

CUBA

Conferencia international de la paz, El Haya, 1907, La República de Cuba en la segunda. Habana, 1908. 2 vols. *Departamento de estado.*

Informe de la administracion provisional desde 1° de diciembre de 1907 hasta el 1° de diciembre de 1908 por Charles E. Magoon, Gobernador provisional. Habana, 1909. v, 549 pp., illus.

GERMANY

Schutzgebiete in Afrika und der Südsee, Jahresbericht über die Entwickelung der, im Jahre 1907–8. *Answärtiges Amt.*

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Relaciones exteriores, Memoria del Ministro de, presentada al Congreso nacional en 1909. 144 pp. (*Ministerio de relaciones exteriores.*

ITALY

Emigrazione e colonie. Raccolta di rapporti die RR. agenti diplomatici e consolari. Vol. 3, America, pt. 1, Brasile. Roma, 1908. 414 p. *Ministers degli affari esteri.*

JAPAN

Korea, Annual report for 1907 on reforms and progress in Seoul, 1908. viii, 140 pp., illus., maps. *H. I. J. M's residency general.*

PANAMA

Relaciones exteriores, Documentos anexos á la Memoria presentada por el Secretario de, á la Asamblea nacional de 1908. v. 1. 287 pp., v. 2, 397 pp. *Secretaria de relaciones exteriores.*

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